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# SCHOOL LAWS

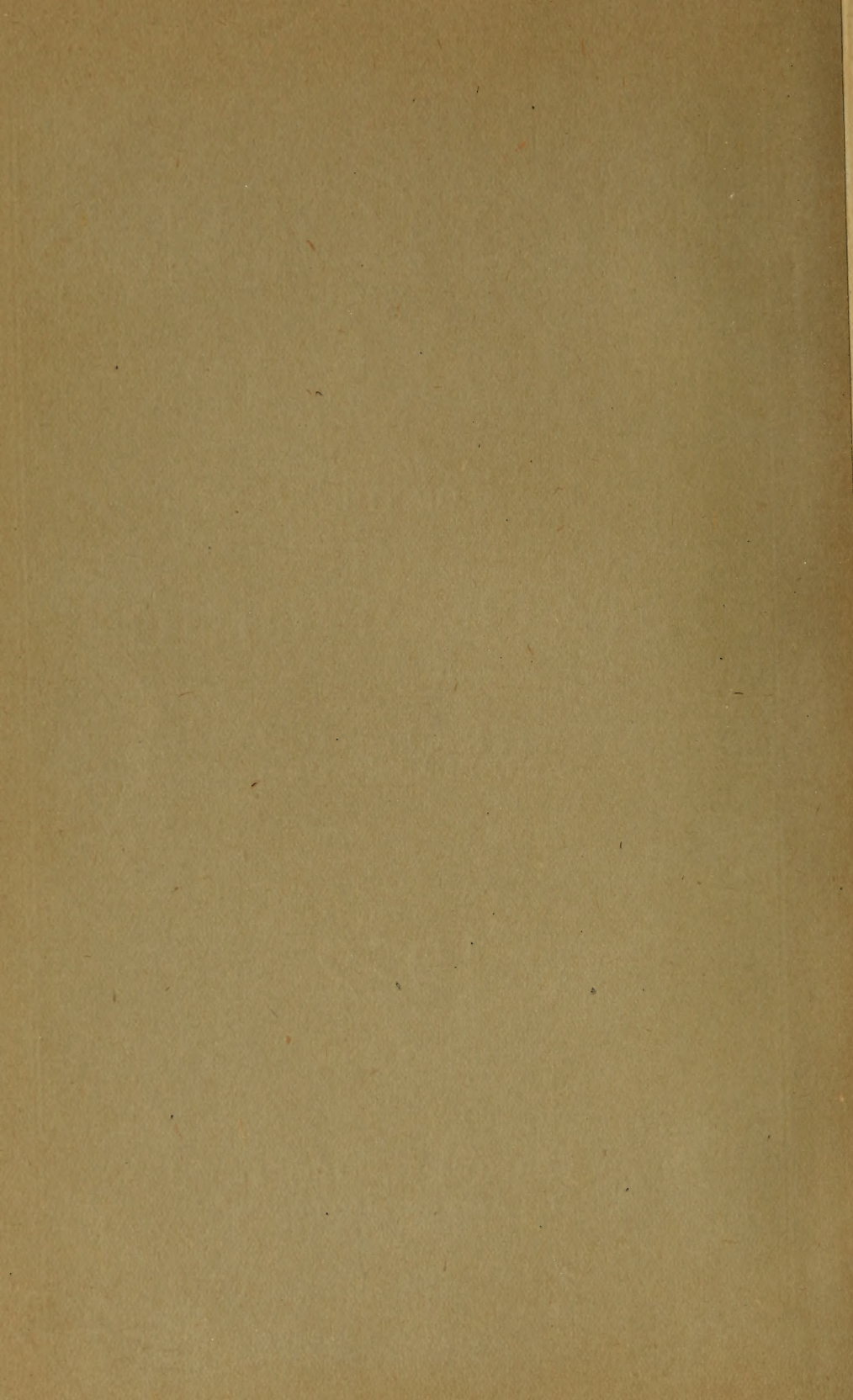
OF THE  
STATE OF OHIO

WITH CITATIONS  
AND BLANK FORMS

1922

VERNON M. RIEGEL  
DIRECTOR OF EDUCATION







OHIO  
SCHOOL LAWS

1922

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Blank Forms and Directions  
to Serve as Guide for  
Officers and Teachers

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*Compiled under the Direction of,*

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## EXPLANATORY NOTE

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In the compilation of this volume, it has been the endeavor to make the contents readily accessible, and to this end a table of contents and two indexes have been prepared.

The table of contents will be found immediately preceding the text and in this table the general subject matter is arranged under chapter headings which indicate the general scope of the subjects treated in each chapter.

The subject index will be found at the end of the volume and is self-explanatory.

The numerical index of section numbers will be found immediately preceding the subject index, and in this all of the sections of the **General Code** relating to schools are arranged in numerical order. A person desiring to find any particular section can do this more quickly by turning to the numerical index, where will be indicated the page upon which such section can be found.

This volume has been fully annotated by Court decisions and the Opinions of the Attorney General to date. Most of these will be found under the various sections to which they refer, but a few which were handed down too late to be inserted in the proper places will be found in the Appendix. Many of the opinions of the Attorney General refer to different sections of the General Code. In order to economize space, the syllabus of each Opinion is given in full under one section and a cross reference made under each of the other sections to which the Opinion applies. The quickest way to find the Opinion to which a cross reference is made, is to turn to the numerical index, and find the section number under which the Opinion is cited.

It has been the intention of the compiler to eliminate all Court decisions and Opinions of the Attorney General which are obsolete. However, in some cases where sections have been amended at different times since an Opinion was rendered, absolute accuracy has not always been possible. In some cases where an Opinion applies in part to an amended section, it has been retained, but in such cases the older Opinion should always be read in the light of the later ones.

The forms of resolutions, etc., appearing in the Appendix have been in most cases taken from transcripts which were approved by the Attorney General, but these are tentative only and for the convenience and guidance of the Boards of Education and the Prosecuting Attorneys or City Solicitors. In no case should they be used as a substitute for the work of the legal advisers of the Boards of Education. They may easily be changed to conform to local conditions.

Under each section is given the history of the enactment and the various amendments. This is done by referring to the volume of the Session Laws, but as it is often times desirable for school officials to know the year in which laws were enacted or amended, immediately following is a table showing the dates of the various volumes of the Session Laws. This will enable anyone to find the year in which any section of the school laws was enacted or amended.

## OHIO SESSION LAWS

(Since 1850)

<i>Volume</i>	<i>Year</i>	<i>Volume</i>	<i>Year</i>
48 .....	1850	80 .....	1883
49 .....	1851	81 .....	1884
50 .....	1852	82 .....	1885
51 .....	1853	83 .....	1886
52 .....	1854	84 .....	1887
53 .....	1856	85 .....	1888
54 .....	1857	86 .....	1889
55 .....	1858	87 .....	1890
56 .....	1859	88 .....	1891
57 .....	1860	89 .....	1892
58 .....	1861	90 .....	1893
59 .....	1862	91 .....	1894
60 .....	1863	92 .....	1896
61 .....	1864	93 .....	1898
62 .....	1865	94 .....	1900
63 .....	1866	95 .....	1902
64 .....	1867	96 .....	1902
65 .....	1868	97 .....	1904
66 .....	1869	98 .....	1906
67 .....	1870	99 .....	1908
68 .....	1871	100 .....	1909
69 .....	1872	101 .....	1910
70 .....	1873	102 .....	1911
71 .....	1874	103 .....	1913
72 .....	1875	104 .....	1914
73 .....	1876	105 .....	1914
74 .....	1877	106 .....	1915
75 .....	1878	107 .....	1917
76 .....	1879	108 Pt. I. ....	1919
77 .....	1880	108 Pt. II. ....	1919-20
78 .....	1881	109 .....	1921
79 .....	1882		



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# PROVISIONS OF CONSTITUTION OF OHIO RELATING TO PUBLIC SCHOOLS

## ARTICLE I

SECTION 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Of the rights of conscience; the necessity of religion and knowledge.

The system of public education is the creature of the Constitution and statutory laws of the State. The Constitution provides that "It shall be the duty of the General Assembly to pass suitable laws \* \* \* and encourage schools as a means of instruction \* \* \*." It is left to the discretion of the General Assembly, in the exercise of the general legislative power conferred upon it, to determine what laws are suitable to secure the organization and management of the contemplated system of common schools, without express restriction except that "No religious or other sect or sects shall ever have any exclusive right to, or control of, any part of the school funds of the State." State, ex rel., v. McCann, 21 O. S. 198, 205.

Held, that an act authorizing classification of schools on the basis of color does not contravene the constitution of the State, nor the Fourteenth Amendment of the Constitution of the United States, and that under such act colored children residing in either of the districts for white children, are not, as of right, entitled to admission into the schools for white children. State, ex rel., v. McCann, *supra*.

Neither this nor any other provision of the Constitution enjoins or requires religious instruction, or the reading of religious books, in the public schools of the state; and the board of education of a school district having adopted a resolution prohibiting the reading of the Bible or other religious books in the schools of the district, the courts have no rightful authority to interfere with the discretion of the board of education in the matter. Board of Education v. Minor, 23 O. S. 211.

Held, that the courts have no power to interfere against a regulation duly adopted by a board of education, requiring that a portion of the Bible be read in the schools of the district as an opening exercise; and that such regulation is not in violation of any provision of the Constitution of Ohio, or of the United States. Nessel v. Board of Education, 1 O. N. P. 140.

Held, on a consideration of this and other provisions of the State Constitution, that a compulsory education law requiring children under a certain age to attend school a certain length of time each year, is constitutional. *Quigley v. State of Ohio*, 5 O. C. C. 638.

An act of the legislature authorizing boards of education to make and enforce rules and regulations to secure the vaccination of pupils attending and eligible to attend the schools of the district, is a valid enactment, not repugnant to the constitution of the State of Ohio, nor violative of the Fourteenth Amendment to the Constitution of the United States. *State, ex rel., v. Board of Education*, 76 O. S. 297.

Held, on a consideration of this provision of the constitution, that the legislature has power to provide for the organization of Teachers' Institutes. *Burton v. Board of Education*, 5 O. N. P. (N. S.) 294.

Held, that an act of the legislature appropriating money to repair the buildings of the Ohio University, was passed by the General Assembly in the discharge of the duty imposed upon it by this section, viz: to pass suitable laws to encourage schools as a means of instruction. *State, ex rel., v. Oglevee*, 37 O. S. 1.

Held, that Section 7817 General Code providing that examinations for applicants for teachers' certificates shall be held on the first Saturday of each month, does not interfere with the rights of conscience, and is not inconsistent with Article I Section 7 of the Constitution. *Op. Atty. Gen.* (1911) p. 514.

Held, on a consideration of this and other constitutional provisions, that Section 7721 General Code does not authorize boards of education to establish military training in public schools; and that a pupil cannot be discriminated against in his general standing in school because he does not join a military unit in such school. *Op. Atty. Gen.* (1919) p. 653.

Citizens can conduct strictly religious German catechism schools for the study of the Bible and church history and such instruction is not a violation of the provisions of Sections 7762-1 and 7762-2 General Code. *Op. Atty. Gen.* (1919) p. 1043.

## ARTICLE II

SECTION 26. All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

Held, in consideration of this provision of the Constitution, that the subject matter of schools, including school districts, and the establishment and change of the same, is one of a general nature; and all legislation as to them must be general, having a uniform operation throughout the state. *State, ex rel., v. Spellmire*, 67 O. S. 77.

An act of the legislature providing for the creation of a Teachers' Pension fund in city districts of the second grade of the first class was held to be in violation of this provision, and unconstitutional. *State, ex rel., v. Kurtz*, 21 O. C. C. 260. *State, ex rel., v. Hubbard*, 22 O. C. C. 262; 65 O. S. 574.

An act of the legislature attempting to validate a previous unconstitutional act providing for the establishment of a special school district in a certain designated township and county, was likewise held to be unconstitutional and void. *Bartlett et al. v. State of Ohio*, 73 O. S. 54.

An act of the legislature in its nature applicable to boards of education generally, but which excepts the boards of education of



certain city school districts from its operation, offends this provision of the constitution, and is unconstitutional and void. *Bower v. Board of Education*, 8 O. C. C. (N. S.) 305.

This provision of the constitution does not, however, prevent the legislature from making a proper classification of the school districts of the state; and a classification of the city school districts on the basis of population is permissible, so long as such classification is not a false, unnecessary, arbitrary, or evasive one. *State ex rel., v. Evans*, 90 O. S. 243.

Held, that the Small Schoolboard act, as found in Sections 4698 to 4707 General Code, inclusive, is a valid exercise of legislative power agreeable to the constitution of Ohio. *State, ex rel., v. Evans*, supra.

Held, that the act of the legislature providing for the establishment of county school districts, and for the election of members of the county board of education in the manner therein provided, was not in conflict with this or any other provision of the state constitution, and was a valid enactment. *Cline v. Martin*, 94 O. S. 420.

SECTION 37. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political sub-division thereof, whether done by contract, or otherwise.

## ARTICLE VI

SECTION 1. The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations.

This provision is cited in decision upholding constitutionality of act of the legislature providing for the organization of county school districts and for the election and qualification of members of county boards of education. *Cline v. Martin*, 94 O. S. 420.

A special act of the legislature, following an affirmative vote by the electors of the school district on the question, requiring the board of education of a city to release the sureties of a county treasurer from liability for school funds of the board, which came into the hands of the treasurer for disbursement, does not contravene this section. *State v. Board of Education*, 38 O. S. 3.

Lands donated by Congress to the legislature of this state for school purposes, are exempt from assessment for the expense of a local road improvement. *Poock v. Ely*, 4 O. C. C. 41.

This section is cited in decision upholding the statutory power of a municipality to receive property in trust for educational purposes and to maintain a university. *State, ex rel., v. Toledo*, 3 O. C. C. (N. S.) 468.

Held, that an act of the legislature authorizing taxation of school lands immediately after sale, as other lands in the state are taxed, is not in contravention of this provision of the constitution. *State, ex rel., v. Purcell*, 31 O. S. 352.

SECTION 2. The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough

Funds for educational and religious purposes.

School funds.

and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

This provision of the constitution is cited in a decision denying the liability of a board of education for a tort committed by it in the official discharge and transaction of the business of the school district. In this case the tort consisted in an act of the board wrongfully and negligently carrying an excavation below the statutory depth of nine feet, thereby undermining and injuring the foundation and walls of a building belonging to an adjoining owner. *Board of Education v. Volk*, 72 O. S. 469. See also *Finch v. Board of Education*, 30 O. S. 317.

This section of the constitution is cited in a decision upholding the compulsory education law with respect to children under certain age therein designated. *Quigley v. State*, 5 O. C. C. 638.

This provision of the constitution was held not to render invalid the statute which provides for free text-books to be supplied to the pupils of the school district. *Mooney v. Bell*, 8 O. N. P. 658.

In a decision denying the power of a municipal corporation to maintain and operate a moving picture exhibition, it was held that this provision of the constitution shows that education supported by taxation is to be conducted by a system of common schools throughout the state. *State, ex rel., v. Lynch*, 88 O. S. 71, 97.

Upon a consideration of the provisions of this section of the constitution it has been held to be a matter within the official discretion of the board of education whether religious education, such as the reading of religious books is permitted in the schools of the district. *Board of Education v. Minor*, 23 O. S. 211; *Nessle v. Hum*, 1 O. N. P. 140.

The tuition fund of a school district is in the nature of a trust fund for the benefit of the school youth, and transfers from said fund in the treasury of a school district to a building fund cannot be made except under the provisions and conditions of Section 5655 General Code and of Sections 2296 to 2302 inclusive, General Code. *Op. Atty. Gen.* (1912) p. 1206.

Public school  
system; boards  
of education.

SECTION 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts. (Adopted September 3, 1912.)

It was held on a consideration of the provisions of this section that the *Jung-Small School Board Act*, carried into the General Code as Sections 4698 to 4707, inclusive, did not contravene the referendum provision of this section of the constitution. *State ex rel., v. Evans*, 90 O. S. 243.

This section confers upon the legislature sufficient authority to enact the law providing for the county board of education and conferring upon such county board of education the power to transfer territory from one school district to another. *Cline v. Martin*, 24 O. C. C. (N S.) 81; 94 O. S. 420.

SECTION 4. A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law.

Superintendent  
of public in-  
struction.

Section 4 of Article VI of the Constitution governs the appointment of the Superintendent of Public Instruction, and under the provisions of said section the term of a person appointed by the governor to fill a vacancy in said office begins at the date of the appointment and qualification of said person and continues for the full term of four years. Op. Atty. Gen. (1916) p. 292.

## ARTICLE XII

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money, excepting all bonds outstanding on the first day of January, 1913, of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and by the means of instruction in connection therewith, which bonds outstanding on the first day of January, 1913, shall be exempt from taxation but burying grounds, public school houses, houses used exclusively for public worship; institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; and laws may be passed to provide against the double taxation that results from the taxation of both the real estate and the mortgage or the debt secured thereby, or other lien upon it, but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law. (Adopted Nov. 5, 1918.)

Taxation by uni-  
form rule; ex-  
emption.

Public school houses which, as such, may be exempted from taxation under the provisions of this section of the constitution are such as belong to the public, and are designed for schools established and conducted under public authority. *Gerke v. Purcell*, 25 O. S. 229.

However, schools which are not public in this sense but which are carried on for the benefit of the public and not with a view to profit, are "institutions of purely public charity" within the meaning of the former provision of this section of the constitution, which authorizes such institutions to be exempted from taxation. *Ib.*

Exemption from taxation of property belonging to colleges and academies provided by Section 5349 of the General Code, extends to all buildings and lands that are used in furthering and carrying out the necessary objects and purposes of the institution.



*Kenyon College v. Schnebly*, 12 O. C. C. 1; affirmed, *Schnebly v. Kenyon College*, 81 O. S. 514.

Residences occupied by the president and professors of such college are exempt, as also is vacant land of the college from which no revenue is derived, but land used for agricultural purposes or pastureage is not exempt. *Kenyon College v. Schnebly*, *supra*.

Property which is used for college purposes alone is exempt from taxation. *Myers v. Akins*, 8 O. C. C. 228.

A building which is owned by a college and which is used for commercial purposes is not exempt although the income therefrom is applied to college purposes. *Cincinnati College v. State*, 19 O. S. 110.

Held, that Section 5353 of the General Code exempting from taxation an endowment fund of a college which belongs exclusively to it and which is devoted solely to deriving an income for its support is within the authority conferred upon the legislature by this section of the constitution. *Little v. Seminary*, 72 O. S. 417.

School property is not liable to assessment for a street improvement; nor can a judgment be rendered against the board of education for the payment of the assessment out of its contingent funds. *City of Toledo v. Board of Education*, 48 O. S. 83.

It appearing that Section 16 of school lands in a certain township was vested in the State for school purposes by an act of Congress, it was held that there is no special statutory provision making such lands liable to assessments for road improvements; and that, inasmuch as such an assessment would be in violation of the trust defined by agreement between the State and the United States, the trustees of said section have no power to consent to such an assessment. *Op. Atty. Gen.* (1911) p. 1034.

Held, that Oberlin College being conducted without a view to individual pecuniary gain, is a public college within the meaning of Section 5349 General Code; and that lands owned by said college and dormitories thereon from which a rental is collected and devoted to the aims of the institution, are exempt from taxation.

Held, further, that the endowment fund of said college is likewise exempt from taxation. *Op. Atty. Gen.* (1911) p. 1298.

When a part of the real estate of an institution of public charity only is rented for commercial purposes, said part being certain rooms of a building owned and occupied by said institution, such rooms so rented may not be exempted from taxation under the provisions of Section 5353 General Code.

Authority for the enactment of that part of Section 5349 General Code, which provides "public colleges and academies and all buildings connected therewith and all lands connected with public institutions of learning not used with a view to profit shall be exempt from taxation" may be found in the provisions of Section 2 of Article XII of the Constitution which authorizes the exemption from taxation of the property of institutions of public charity. *Op. Atty. Gen.* (1916) p. 1640.

No part of the cost of the improvement of a street on which school property, used exclusively for public school purposes abuts, can be assessed against such property, and the board of education of the school district in which such property is located is neither required nor authorized to pay any part of the cost of said improvement out of its contingent fund, or to levy a tax for said purpose. *Op. Atty. Gen.* (1916) p. 663.

"Bonds issued by a board of education are subject to taxation with the exception of such bonds as were issued and outstanding" on January 1, 1913. *Op. Atty. Gen.* (1920) p. 378.

**SECTION 5.** No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

Funds raised by taxes levied for sinking fund purposes cannot be diverted and used for other purposes. *Op. Atty. Gen.*, No. 1816, Jan. 26, 1921.



SECTION 11. No bonded indebtedness of the state, or <sup>Sinking fund,</sup> any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity. (Adopted September 3, 1912.)

Under this provision of the constitution, the payment of interest and retirement of bonds are to be provided for first, and the levy of taxes to pay current expenses becomes to this extent a secondary consideration. *Rabe v. Board of Education*, 88 O. S. 403, 423.

Section 11 of Article XII of the Constitution of Ohio requires the taxing authority of any political subdivision of the state proposing to issue bonds, to provide at the time the issue of bonds is authorized, for levying and collecting annually by taxation an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity. This provision made at the time the issue of bonds is authorized is mandatory on all subsequent taxing officials of that political subdivision during the term of the bonds. *Link v. Karb*, 89 O. S. 326.

Although it is not necessary that the provision for levying and collecting by taxation the amount sufficient to pay the interest on the bonds and to provide a sinking fund for their final redemption should be contained in the ordinance or resolution which authorizes the issue of such bonds, and such provision for annual tax levies for said purposes can be made by subsequent ordinance or resolution prior to the actual issue of the bonds, it is in all cases desirable that said provision for tax levies should be made in the ordinance or resolution providing for the issue of the bonds. See *Link v. Karb*, *supra*.

Held, on a consideration of the case of *Rabe v. Board of Education*, 88 O. S. 403, that Section 7629 General Code, providing for the issue of bonds by boards of education for school purposes, is still in effect; and that tax levies for interest and sinking fund purposes with respect to bonds issued under the authority of said section of the General Code, are subject to the provisions of the Smith One Per Cent. Law, so-called, and of Section 11 of Article XII of the Constitution. *Op. Atty. Gen.* (1914) p. 1078.

Where serial bonds are issued by a board of education for school purposes, Section 11 of Article XII of the State Constitution requires provision to be made for a levy of taxes for both interest and sinking fund purposes during the entire number of years between the incurring of the indebtedness and the date of the maturity of the last of the series; and where the resolution of the Board of Education providing for the issue of serial bonds bearing date of March 1, 1918, by its terms provides that the first annual levy shall be made in 1919, such resolution is illegal and the bonds therein provided for should be rejected. *Op. Atty. Gen.* (1918) p. 634.

The resolution of a board of education providing for the issuance of bonds must provide for the annual levy and collection of taxes to pay the interest on said bonds, and to cover an aliquot part of the particular indebtedness thus created. The levies on account of principal may not be made substantially different for the several years during which the bonds are to run; and if such bonds are to be issued in series, and sinking fund levies in the strict sense are not provided for, levies on account of principal being limited to that which is payable in any year, the series must be so arranged as that substantially equal amounts of principal shall mature in each year of the life of the bonds. *Op. Atty. Gen.* (1918) p. 873.

## ARTICLE XV

Oath of officers.

SECTION 7. Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office.

## ARTICLE XVII

Terms of officers, vacancies, etc.

SECTION 2. The term of office of the governor, lieutenant governor, attorney-general, secretary of state and treasurer of state shall be two years and that of the auditor of state shall be four years. The term of office of judges of the supreme court and circuit courts shall be such even number of years not less than six (6) years as may be prescribed by the general assembly; that of the judges of the common pleas court six (6) years and of the judges of the probate court, four (4) years, and that of other judges shall be such even number of years not exceeding six (6) years as may be prescribed by the general assembly. The term of office of justices of the peace shall be such even number of years not exceeding four (4) years, as may be prescribed by the general assembly. The term of office of the members of the board of public works shall be such even number of years not exceeding six (6) years as may be so prescribed; and the term of office of all elective county, township, municipal and school officers shall be such even number of years not exceeding four (4) years as may be so prescribed.

And the general assembly shall have power to so extend existing terms of office as to effect the purpose of section 1 of this article.

Any vacancy which may occur in any elective state office other than that of a member of the general assembly or of governor, shall be filled by appointment by the governor until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election at the first general election for the office which is vacant, that occurs more than thirty (30) days after the vacancy shall have occurred. The person elected shall fill the office for the unexpired term. All vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by law. (As adopted November 7, 1905: 97 v. 641.)

# CHAPTER I

## CODE PROVISIONS OF GENERAL APPLICATION

### SECTION

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### SECTION

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SECTION 1. The word "oath" includes affirmation. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by a person having conscientious scruples to taking an oath. An affirmation has the same force and effect as an oath.

Oath includes affirmation.

HISTORY.—R. S. § 1; 51 v. 57, § 506; S. & C. 1130.

SECTION 2. Each person chosen or appointed to an office under the constitution or laws of the state, and each deputy or clerk of such officer, shall take an oath of office before entering upon the discharge of his duties. The failure to take such oath shall not affect his liability or the liability of his sureties.

All officers must take an oath of office.

HISTORY.—Rev. Stat. of 1880. See also Saylor, 2197.

SECTION 3. The oath of office of each judge of a court of record shall be to support the constitution of the United States and the constitution of this state, to administer justice without respect to persons, and faithfully and

Oath of office of judges and other officers.



impartially to discharge and perform all the duties incumbent on him as such judge, according to the best of his ability and understanding. The oath of office of every other officer, deputy or clerk, shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office.

HISTORY.—R. S. § 3; 50 v. 67 § 19; S. & C. 381.

An office is vacant if the person does not qualify.

SECTION 7. A person elected or appointed to an office who is required by law to give a bond or security previous to the performance of the duties imposed on him by his office, who refuses or neglects to give such bond or furnish such security, within the time and in the manner prescribed by law, and in all respects to qualify himself for the performance of such duties, shall be deemed to have refused to accept the office to which he was elected or appointed, and such office shall be considered vacant and be filled as provided by law.

HISTORY.—R. S. § 19; 29 v. 407, § 4; S. & C. 888.

Officers to hold till successors qualified.

SECTION 8. A person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws.

HISTORY.—Revised Statutes of 1880.

The president of a board of education is an officer within the provisions of this section. State ex rel v. Withrow 11 O. C. C. (N.S.) 569.

The clerk of the board of education is a public officer within the purview of this section of the General Code, and as such continues in office until his successor is elected or appointed and qualified. State ex rel v. Cave, 4 O. C. C. (N. S.) 647.

Boards of education which failed to organize on the first Monday of January next after the election of the members of such board, should organize under the provisions of Section 4747 General Code, as soon as the matter of their failure to organize is called to their attention.

The president and vice-president of such boards hold over only until the board of which they are members reorganizes. Op. Atty. Gen. (1917) p. 40.

Term of appointee to elective office.

SECTION 10. When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified. Unless otherwise provided by law, such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred. This section shall not be construed to postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, nor to affect the official term, or the time for the commencement thereof, of any person elected to such office before the occurrence of such vacancy.

HISTORY.—Revised Statutes of 1880.

A vacancy does not occur in office where there is an incumbent duly authorized to hold over, and who is legally qualified to perform the duties of the office. Op. Atty. Gen. (1917) p. 1676.



Under the provisions of Section 4748 General Code a person elected by the board of education of a school district to fill a vacancy caused by the resignation of a member of such board, holds office for the unexpired term for which the member so resigning was elected, and until his successor is elected and qualified. Op. Atty. Gen. (1915) p. 1566.

In the case of vacancies in the school board filled by appointment, Section 10 General Code provides that a successor shall be elected for the unexpired term at the first general election for such office, if such vacancy occurs more than thirty days before such election.

Such appointee, however, has the same right as an elective officer to hold over until his successor is elected and qualified. Op. Atty. Gen. (1912) p. 1102.

SECTION 15. No member of either house of the general assembly except in compliance with the provisions of this act (G. C. § 15) shall:

Members of general assembly ineligible to certain appointments and employments.

1 — Be appointed as trustee or manager of a benevolent, educational, penal or reformatory institution of the state, supported in whole or in part by funds from the state treasury;

2 — Serve on any committee or commission authorized or created by the general assembly, which provides other compensation than actual and necessary expenses;

3 — Accept any appointment, employment or office from any committee or commission authorized or created by the general assembly, or from any executive, or administrative branch or department of the state, which provides other compensation than actual and necessary expenses.

Any such appointee, officer or employee who accepts a certificate of election to either house shall forthwith resign as such appointee, officer or employee and in case he fails or refuses to do so, his seat in the general assembly shall be deemed vacant. Any member of the general assembly who accepts any such appointment, office or employment, shall forthwith resign from the general assembly and in case he fails or refuses to do so, his seat in the general assembly shall be deemed vacant. But the provisions of this section shall not apply to school teachers, township officers, justices of the peace, notaries public or officers of the militia.

Exceptions.

HISTORY.—R. S. § 18-1; 87 v. 241; 104 v. 252; 106 v. 306.

SECTION 17-I. Except in case of extraordinary emergency, not to exceed eight hours shall constitute a day's work and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract or otherwise; and it shall be unlawful for any person, corporation or association, whose duty it shall be to employ or to direct and control the services of such workmen, to require or permit any of them to labor more than eight hours in any calendar day or more than forty-eight hours in any week, except in cases of extra-

Number of hours constituting a day's work; week's work.

ordinary emergency. This section shall be construed not to include policemen or firemen.

HISTORY.—103 v. 854, § 1; 103 v. Pt. II, 1286.

The expression "extraordinary emergency" in this section which provides that eight hours shall constitute a day's work on public work except in an extraordinary emergency, means an unexpected situation which arises in an extraordinary and unforeseen manner. *State v. Walters* 60 Bull. 481.

If a board of education delays about a month after the summer vacation has begun in authorizing the superintendent of buildings to enter into a contract for constructing a rest room in the corridor of a school building, and such work cannot be done conveniently while the school is in session, the fact that it is important to complete such rest room before school opens does not justify a contractor, who takes such contract with knowledge of the facts, in requiring and permitting his workmen to work more than eight hours a day; especially if such result might have been accomplished by employing extra shifts of men for eight hours or less each. *State v. Walters, supra*.

Held, that the provisions of this section apply to janitors of state normal schools. *Op. Atty. Gen.* (1916) p. 479.

The law calling for an eight-hour day on public works does not apply to educational institutions such as Miami University. Such an institution is not a public work in the sense intended by the statute. *Op. Atty. Gen.* (1914) p. 283.

Gifts, devises  
and bequests  
to public au-  
thorities.

SECTION 18. The state, a county, township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. This section shall not affect the statutory provisions as to devises or bequests for such purposes.

HISTORY.—R. S. § 20; 78 v. 109; 66 v. 8, § 1; 74 v. 38, § 20; 75 v. 42, § 1.

A county can take by will for the purpose of education, and such gift vests in the board of county commissioners of such county, and it may distribute for such purposes as it may choose: *Christy v. Commissioners*, 41 O. S. 711.

Illegal loans  
or deposits by  
Public officers.

SECTION 19. The state, a county, township, municipal corporation, or school board, shall not be precluded by the illegal loan or deposit by an officer or agent of public money, funds, bonds, securities, or assets, belonging to it, from suing for and recovering the same. Such suit shall not be held to be an adoption or satisfaction of such illegal transaction.

HISTORY.—R. S. § 21; 60 v. 64, § 1; S. & S. 920.

Fees and  
moneys to be  
paid into state  
treasury  
weekly.

SECTION 24. On or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such

state officer, state institution, department, board, commission, college, normal school or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. Where tuitions and fees are paid to the officer or officers of any college, normal school or university receiving state aid, said officer or officers shall retain a sufficient amount of said tuition fund and fees to enable said officer or officers to make refunds of tuition and fees incident to conducting of said tuition fund and fees. At the end of each term of any college, normal school or university receiving state aid the officer or officers having in charge said tuition fund and fees shall make and file with the auditor of state an itemized statement of all tuitions and fees received and disposition of the same.

HISTORY. — R. S. §200-2; 97 v. 535, § 1; 104 v. 178.

Ohio University, Miami University, Ohio State University and the combined normal and industrial department of Wilberforce University are not affected by the provisions of section 24, General Code, which provides that state officers, departments, boards and commissions shall pay to the treasurer of state on or before Monday of each week all moneys received by them during the preceding week. Op. Atty. Gen. (1914) p. 61.

See Opinions of Attorney General (1920) p. 567, cited under Sec. 7807-3.

SECTION 28. The flag of the state of Ohio shall be pennant shaped. It shall have three red and two white horizontal stripes; the union of the flag shall be seventeen five-pointed stars, white in a blue triangular field, the base of which shall be the staff end or vertical edge of the flag, and the apex of which shall be the center of the middle red stripe. The stars shall be grouped around a red disc superimposed upon a white circular "O". The proportional dimensions of the flag and of its various parts shall be according to the official design thereof on file in the office of the secretary of state. One state flag of uniform dimensions shall be furnished to each company of the Ohio National Guard.

Official flag of Ohio; one shall be furnished each company of O. N. G.

HISTORY. — R. S. § 23a; 95 v. 445; 106 v. 341. As to displaying foreign flags on public buildings, see G. C. § 12395.

SECTION 29. The scarlet carnation is hereby adopted as the state flower of Ohio as a token of love and reverence for the memory of William McKinley.

Floral emblem of the state.

HISTORY. — 97 v. 631.

SECTION 30. The coat of arms of the state of Ohio shall consist of the following device: A shield, in form, a circle; on it, in the foreground, on the right, a sheaf of wheat; on the left, a bundle of seventeen arrows, both standing erect; in the background, and rising above the sheaf and arrows, a mountain range, over which shall appear a rising sun.

Device of coat of arms of state.

HISTORY. — R. S. § 15; 65 v. 175, § 1; S. & S. 729. As to use of coat of arms on seal, see appendix, § 13904.



SECTION 260-I. For all state officers, departments, commissions, boards and institutions of the state the fiscal year shall be and is hereby fixed to begin on the first day of July in each year and to end on the last day of June of the succeeding year.

HISTORY.—106 v. 508; 103 v. 661, § 1.

**Definitions.**

[SECTION 486-1a]. SECTION 486-I.

1. The term "civil service" includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.

2. The "state service" shall include all such offices and positions in the service of the state or the counties thereof, except the cities and city school districts.

3. The term "classified service" signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof.

4. The term "state commission" signifies the state civil service commission of Ohio.

5. The term "municipal commission" signifies the municipal civil service commission of a city.

6. The term "appointing authority" signifies the officer, commission, board, or body having the power of appointment to or removal from positions in any office, department, commission, board or institution.

7. The term "commission" shall signify either the state civil service commission of Ohio or the civil service commission of any municipality.

8. The term "employee" or "subordinate" signifies any person holding a position subject to appointment, removal, promotion or reduction by an appointing officer.

HISTORY.—106 v. 400; 103 v. 698, § 1. The same General Code section number (§ 486-1) was given by the Legislature to 103 v. 119 (131), and by the Attorney General to 103 v. 698, § 1. Accordingly it is necessary to change the General Code section number of 103 v. 698, § 1, from G. C. § 486-1 to [G. C. § 486-1a].

This and the following sections of the General Code, constituting the civil service law were enacted for the purpose of carrying into effect the provisions of Section 10 of Article V of the Ohio Constitution adopted September 3, 1912, and are constitutional and valid. *Green v. Civil Service Commission* 90 O. S. 253.

Officers, positions and employments in villages and village school districts are not included in the operation of the civil service law of this state. *Op. Atty. Gen. (1916) p. 1186.*

**Method of appointment.**

SECTION 486-2. On and after the taking effect of this act (G. C. §§ 486-1 to 486-31), appointments to and promotions in the civil service of the state, the several counties, cities and city school districts thereof, shall be made only according to merit and fitness to be ascertained as far as practicable by competitive examination; and thereafter no person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employee in the civil service of the state, the several counties, cities and city school districts thereof, in any manner or by any means other than those prescribed



in this act or by the rules of the state or municipal civil service commissions within their respective jurisdictions as herein provided.

HISTORY.—106 v. 400 (401); 103 v. 698, § 2.

SECTION 486-3. After this act (G. C. §§ 486-1 to 486-31) goes into effect the governor shall appoint, by and with the advice and consent of the senate, two persons of recognized character and ability to serve, one for two years and one for four years, as civil service commissioners, who shall constitute the state civil service commission of Ohio. Upon the expiration of the term of office of each commissioner so appointed, his successor shall be appointed by the governor to serve for a period of four years from the date of his appointment and until a successor is appointed and qualified. A vacancy in the office of commissioner shall be filled by the governor for the remainder of the unexpired term.

State civil service commission; appointment, term, vacancy, removal.

The governor may remove any member of the state civil service commission at any time for inefficiency, neglect of duty, or malfeasance in office, having first given to the commissioner a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense, and any such act or removal by the governor shall be final. A statement of the findings of the governor, the reasons for his actions, and the answer, if any, of the commissioner, shall be filed by the governor with the secretary of state and shall be open to public inspection. At the time of any appointment both commissioners shall not be adherents of the same political party.

No commissioner shall hold any other office of profit or trust under the government of the United States, the state of Ohio, or any political subdivision thereof.

HISTORY.—106 v. 400 (401); 103 v. 698 (699), § 3.

SECTION 486-4. Each commissioner shall devote his entire time to the duties of his office and shall receive an annual salary of four thousand dollars, and his necessary traveling expenses incurred in the discharge of his official duties.

Salary and expenses.

HISTORY.—106 v. 400 (401); 103 v. 698 (699), § 4.

SECTION 486-5. The governor at the time of the appointment of the commission, or member thereof, shall designate one of its members as chairman. The commission shall appoint, from an eligible list to be prepared by said commission, within thirty days after its appointment, a secretary who shall be ex-officio chief examiner, whose duty it shall be, under the direction of the commission, to keep minutes of the proceedings of the commission, preserve all reports made to the commission, keep the records of all examinations, superintend the examinations, and perform such other and further duties as the commission shall pre-

Organization; record of proceedings and examinations.

scribe. The salary of the secretary shall be not to exceed thirty-six hundred dollars per annum, to be fixed by the commission.

**Quorum.**

Two members of the commission shall constitute a quorum for the transaction of business.

Appointment of examiners, inspectors, clerks, etc.; compensation and expenses; powers and duties.

The commission may also appoint such examiners, inspectors, clerks and other assistants as may be necessary to carry out the provisions of this act (G. C. §§ 486-1 to 486-31), and fix their salaries within the limits of the appropriation made by the general assembly for that purpose. The commission may designate persons in or out of the official service of the state to serve as examiners or assistants under its direction. Each such person shall receive such compensation for each day actually and necessarily spent in the discharge of his duties as examiner or assistant as shall be determined by the commission; provided, however, that if any such examiner or assistant is in the official service of the state, or any political subdivision thereof, it shall be a part of his official duties to render such services in connection with such examinations, without extra compensation. The secretary, examiners, inspectors, clerks and assistants shall, in addition to their salaries, receive such necessary traveling and other expenses as are incurred in the actual discharge of their official duties. The commission may also incur the necessary expenses for stationery, printing and other supplies incident to the business of the department. All salaries and expenses shall be approved and allowed by the commission and paid out of the treasury of the state on the warrant of the auditor, in the same manner as the salaries and expenses of other state officers are paid.

HISTORY.—106 v. 400 (402); 103 v. 698 (699), § 5.

Rooms and accommodations.

SECTION 486-6. The state commission shall maintain suitable offices in the city of Columbus; and it shall be the duty of the officers of the state, or any political subdivision thereof, at any place where examinations are directed to be held by the commission, to allow the reasonable use of public buildings and rooms and to furnish the same with heat and light, for holding such examinations, and in all proper ways to facilitate the work of the commission in carrying out the provisions of this act. (G. C. §§ 486-1 to 486-31).

HISTORY.—106 v. 400 (402); 103 v. 698 (700), § 6.

Powers and duties.

SECTION 486-7. The commission shall,

Rules and regulations.

First: Prescribe, amend and enforce administrative rules for the purpose of carrying out and making effectual the provisions of this act (G. C. §§ 486-1 to 486-31).

Records.

Second: Keep minutes of its own proceedings and records of its examinations and other official actions. All such records, except recommendations of former employers, shall be open to public inspection under reasonable regula-

tions; provided, however, that the governor or any person designated by him, may, for the purpose of investigation, have free access to all such records, whenever he has reason to believe that the provisions of this act or the administrative rules of the commission prescribed thereunder, are being violated.

Third: The commission shall prepare, continue and keep in its office, a complete roster of all persons in the classified service. This roster shall be open to public inspection at all reasonable hours. It shall show in reference to each of such persons, his name, address, the date of his appointment to or employment in such service, his salary or compensation, the title of the place or office which he holds, the nature of the duties thereof, and, in case of his removal or resignation, the date of the termination of such service.

Record of persons in classified service.

Fourth: Make investigations, either sitting in banc or through a single commissioner or the chief examiner, concerning all matters touching the enforcement and effect of the provisions of this act and the administrative rules of the commission prescribed thereunder. In the course of such investigations each commissioner and the chief examiner shall have the power to administer oaths and affirmations and to take testimony relative to any matter which the commission has authority to investigate.

Investigations and enforcement of provisions of law.

Fifth: Have the power to subpoena and require the attendance and testimony of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to the investigations, inquiries, or hearings on appeal from the action or decision of an appointing officer as is herein authorized, and to examine them as it may require in relation to any matter which it has authority to investigate, inquire into or hear. Fees shall be allowed to witnesses, and on their certificate, duly audited, shall be paid by the state treasurer, or in the case of municipal commissions by the county treasurer, for attendance and traveling, as is provided in section 3012 of the General Code for witnesses in courts of record. All officers in the civil service of the state or any of the political subdivisions thereof and their deputies, clerks, subordinates and employes shall attend and testify when summoned so to do by the commission. Depositions of witnesses may be taken by the commission in the manner prescribed by law for like depositions in civil actions in the courts of common pleas. In case any person, in disobedience to any subpoena issued by the commission, or any of them, or their chief examiner, fails or refuses to attend and testify to any matter regarding which he may be lawfully interrogated, or produce any documentary evidence pertinent to any investigation, inquiry or hearing, it shall be the duty of the court of common pleas of any county, or any judge thereof, where such disobedience, failure or refusal occurs, upon application of the state commission, or a

Production of evidence; fees.



municipal commission, or any commissioner thereof, or their chief examiner, to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such courts or a refusal to testify therein;

Hearing in  
matters of  
appeal.

Sixth: Hear appeals from the decisions of appointing officers of persons in the classified service, who have been reduced in pay or position, laid off, suspended, discharged or discriminated against by such appointing authority;

Annual report.

Seventh: Make a report to the governor annually, on or before the first day of January of each year, showing its own actions, the rules and all exceptions thereto in force, and any recommendations for the more effectual accomplishment of the purposes of this act. The commission shall also furnish any special reports to the governor whenever the same are requested by him. Such reports shall be printed for public distribution, under the same regulations as are the reports of other state officers, boards or commissions.

**HISTORY.**—106 v. 400 (403); 103 v. 698 (700), § 7. For an analogous section, see P. & A. Code § 4483, which was R. S. Bates, § 1536-697; 99 v. 566, § 161; 96 v. 73, § 161; P. & A. Code § 4486, which was R. S. Bates, § 1536-700; 99 v. 567, § 164; 96 v. 74, § 164; P. & A. Code § 4492, which was R. S. Bates, § 1536-718; 96 v. 78, § 182; P. & A. Code § 4493, which was R. S. Bates, § 1536-718; 96 v. 78, § 182; P. & A. Code § 4494, which was R. S. Bates, § 1536-718; 96 v. 78, § 182; and P. & A. Code § 7690-2, which was 101 v. 154.

For the present statute with reference to the reports of state officers, see G. C. § 2264-1.

Positions in  
unclassified  
service.

**SECTION 486-8.** The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) The unclassified service shall comprise the following positions which shall not be included in the classified service, and which shall be exempt from\* all examinations required in this act.

1. All officers elected by popular vote or persons appointed to fill vacancies in such offices.

2. All election officers and the employes and clerks of persons appointed by boards of deputy supervisors and inspectors of elections.

3. The members of all boards and commissions and heads of principal departments, boards and commission [commissions] appointed by the governor or by and with his consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or if there be no mayor such other similar chief appointing authority of any city or city school district. Provided, however, that nothing contained in this act shall exempt the chiefs of police departments and chiefs of fire departments of municipalities from the competitive classified service as provided in this act [G. C. §§ 486-1 to 486-31].

4. The members of county or district licensing boards or commissions, and boards of revision and assistant assessors.



5. All officers and employes elected or appointed by either or both branches of the general assembly, and such employes of the city council as are engaged in legislative duties.

6. All commissioned, non-commissioned officers and enlisted men in the military service of the state including military appointees in the offices of the adjutant-general.

7. All presidents, directors, superintendents, principals, instructors and teachers connected with the public school system, colleges and universities; and the library staff of any library in the state supported wholly or in part at public expense.

8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistant or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.

9. The deputies of elective or principal executive officers authorized by law to act for and in the place of their principals and holding a fiduciary relation to such principals.

10. Bailiffs, constables, official stenographers and commissioners of courts of record, and such officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination.

11. Assistants to the attorney-general, special counsel appointed or employed by the attorney-general, assistants to county prosecuting attorneys and assistants to city solicitors.

12. Such teachers and employes in the agricultural experiment stations; such teachers in the benevolent, penal or reformatory institutions of the state; such student employes in normal schools, colleges and universities of the state; and such unskilled labor positions as the state commission or any municipal commission may find it impracticable to include in the competitive classified service; provided, that such exemptions shall be, by order of the commission, duly entered on the record of the commission with the reasons for each such exemption.

(b) The classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

Persons in  
classified  
service.

1. The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appoint-

ments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer or reduction, as provided in this act, and the rules of the commission, by appointment from those certified to the appointing officer in accordance with the provisions of this act.

2. The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be filled by appointment from lists of applicants registered by the commission. The commission shall in its rules require an applicant for registration in the labor class to furnish such evidence or take such tests as it may deem proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity and experience in the work or employment for which he applies. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the commission shall certify from the highest on the list, double the number to be employed, from which the appointing officer shall appoint the number actually needed for the particular work. In the event of more than one applicant receiving the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

**HISTORY.**—106 v. 400 (404); 103 v. 698 (701), § 8. For an analogous section, see P. & A. Code § 4479, which was R. S. Bates, § 1536-694; 99 v. 565, § 158; 96 v. 72, § 158; and P. & A. Code § 7690-1, which was 101 v. 154.

Held, that under the rules of the board of education of Cincinnati, a janitor of a public school building is an employee of the board rather than an independent contractor, and that as such, he is within the classified service. *State ex rel v. Witt* 3 App. 414, 20 O. C. C. (N. S.) 529.

The civil service commission of a city has control and supervision of the city school district in which said city is located.

Janitors of school buildings in such city school district are in the classified lists under the provisions of Section 486-8 General Code, and may be appointed only as provided by the law relating to appointments in such service. *Op. Atty. Gen. (1916) p. 185.*

Clerks of boards of education are in the unclassified service by virtue of the provisions of paragraph 8 of Section 486-8 General Code. *Op. Atty. Gen. (1916) p. 185.*

Members of the county board of school examiners authorized by Section 7811 General Code, are not subject to the civil service law. *Op. Atty. Gen. (1914) p. 1301.*

Paragraph 12 of Section 8 of the civil service law (Section 486-8 General Code) includes the institutions and schools therein mentioned, whether the same be those of the state at large or whether they be under the control of political sub-divisions thereof. *Op. Atty. Gen. (1917) p. 1405.*

In city school districts all persons in the employ of the board of education of such city school district are in the classified civil service unless they are directors, superintendents, principals, instructors or teachers, as provided in paragraph 7 of Section 486-8 General Code. *Op. Atty. Gen. (1920) p. 80.*

Under Section 486-8 of the General Code, the municipal civil service commission of each city in the state is the civil service commission of the city school district in which such city is located, and such municipal civil service commission has authority to conduct examinations for all positions and employments under the board of education of such city school district unless the positions thereunder come within the exemptions mentioned within Section 486-8 General Code. Op. Atty. Gen. (1920) p. 80.

The directors connected with the public school system, mentioned in paragraph 7 of Section 486-8 General Code, are the directors of schools in city school districts, as provided for in sections 7695, 7696, 7697 and 7698 General Code, and the statutes do not recognize any other kind of directors in connection with the public school system of the state Op. Atty. Gen. (1920) p. 80.

The board of education of a city school district is compelled, under the civil service act of the state, to make its appointments of employes of the board from eligible lists prepared by the civil service commission including all positions which are not specifically exempted by the civil service act of Ohio. Op. Atty. Gen. (1920) p. 88.

SECTION 486-9. As soon as practicable after the taking effect of this act [G. C. §§486-1 to 486-31], the commission shall put into effect rules for the classification of offices, positions and employments, in the civil service of the state and the several counties thereof; for appointment, promotions, transfers, lay-offs, suspensions, reductions, reinstatements and removals therein and examinations and registrations therefor; and for maintaining and keeping records of the efficiency of officers and employes in accordance with the provisions of this act. Due notice of the contents of such rules and of all changes therein shall be given to appointing officers affected thereby, and such rules shall also be printed for public distribution; provided, however, that until such rules are adopted and in force, the rules existing when this law takes effect shall continue in force.

Rules and classification.

HISTORY.—106 v. 406 (406); 103 v. 698 (702), § 9. For an analogous section, see P. & A. Code § 4426, which was R. S. Bates, § 1536-700; 99 v. 567, § 164; 96 v. 74, § 164.

SECTION 486-10. All applicants for positions and places in the classified service shall be subject to examination which shall be public, competitive and free for all, within certain limitations, to be determined by the commission, as to citizenship, residence, age, sex, experience, health, habits and moral character: provided, however, that any soldier, sailor, marine or Red Cross nurse who has served in the army or navy or hospital service of the United States in the war of the Rebellion, the war with Spain, or the war with the Central Powers of Europe who has been honorably discharged therefrom and is a resident of Ohio, may file with the civil service commission a certificate of service and honorable discharge, whereupon his name shall be placed upon an eligible list by the commission, from which eligible list he may be appointed to any position in the civil service of the state which such appointing power may deem him qualified to fill. Such examinations shall be practical in character and shall relate directly to those matters which will fairly test the relative

Examinations; exception as to soldiers, sailors and nurses.



capacity of the person examined to discharge the particular duties of the position for which appointment is sought, and shall, when appropriate, include tests of physical qualifications, health and manual skill.

Notice of time and place of examination.

The state commission shall have control of all examinations, except as otherwise provided in this act [G. C. § 486-10]. No questions in any examination shall relate to political or religious opinions or affiliations. Reasonable notice of the time and place and general scope of every competitive examination for appointment to a position in the civil service, except as otherwise provided for in this act, shall be given by the commission. Written or printed notices of every examination for the state classified service shall be sent by the commission to the county clerk of each county in the state, and to the city clerk of each municipality of the state, and such notices, promptly upon receipt by them, shall be posted in conspicuous places in the court house of the county and in the city hall of the municipality, respectively. Such notices shall also be posted in a conspicuous place in the office of the commission for at least two weeks before any examination. In case of examinations limited by the commission to a district, county or city, the commission shall provide in its rules for adequate publicity of such examinations in the district, county or city, within which competition is permitted.

HISTORY.—108 v. Pt. II 1198; 106 v. 400 (406); 103 v. 698 (702), § 10. For an analogous section, see P. & A. Code § 4480, which was R. S. Bates, § 1536-695; 99 v. 566, § 159; 96 v. 73, § 159; and see also R. S. § 1545-141.

Statements required in applications.

SECTION 486-II. The commission shall require persons applying for admission to any examination, provided for by this act or by the rules of the commission prescribed thereunder, to file with the commission within a reasonable time prior to the proposed examination a formal application in which the applicant shall state under oath or affirmation:

- (1) Full name, residence and postoffice address.
- (2) Nationality, age and place and date of birth.
- (3) Health and physical capacity for the public service sought.
- (4) Business and employments and residences for five previous years.
- (5) Such other information as may be reasonably required touching the applicant's merit and fitness for the public service sought; but no inquiry shall be made as to any religious or political opinions or affiliations of the applicant.

Examination fee.

No fee or other assessment shall be charged for examination for positions, provided for by this act or by the rules of the commission prescribed thereunder, where the annual salary does not exceed six hundred dollars; for positions where the annual salary exceeds six hundred dollars and is less than one thousand dollars, an examina-

tion fee of fifty cents shall be charged; for positions where the annual salary is one thousand dollars or more, an examination fee of one dollar shall be charged. All fees collected under the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund, or in the case of cities into the city treasury.

Blank forms for applications shall be furnished by the commission without charge to any persons requesting the same. The commission may require in connection with such application such certificate of persons having knowledge of the applicant as the good of the service may demand. The commission may refuse to examine an applicant, or after an examination to certify an eligible, who is found to lack any of the established preliminary requirements for the examination or who is physically so disabled as to be rendered unfit for the performance of the duties of the position which he seeks, or who is addicted to the habitual use of intoxicating liquors or drugs to excess, or who has been guilty of any crime or of infamous or notoriously disgraceful conduct, or who has been dismissed from either branch of the civil service for delinquency or misconduct, or who has made false statements of any material fact, or practiced, or attempted to practice, any deception or fraud in his application or in his examination, in establishing his eligibility or securing his appointment.

Blank forms;  
grounds for  
refusal to cer-  
tify eligible.

HISTORY.—106 v. 400 (407); 103 v. 698 (703), § 11.

Whether a person totally blind is physically unfit for the position of superintendent of the state school for the blind is to be determined by the civil service commission under authority of this section, and not by the appointing authority, the state board of administration; but said state board of administration may take this circumstance into consideration in making the appointment from the certified list under Section 486-13, General Code. State v. Board of Administration, 92 O. S. 457.

SECTION 486-12. From the returns of the examinations the commission shall prepare an eligible list of the persons whose general average standing upon examinations for such grade or class is not less than the minimum fixed by the rules of the commission and who are otherwise eligible; and such persons shall take rank upon the eligible list as candidates in the order of their relative excellence as determined by the examination without reference to priority of time of examination. In the event of two or more applicants receiving the same mark in an examination, priority in the time of application shall determine the order in which their names shall be placed on the eligible list. The term of eligibility of each list shall be fixed by the commission at not less than one year nor more than two years. When an eligible list is reduced to three names or less a new list shall be prepared.

Eligible lists.

HISTORY.—106 v. 400 (408); 103 v. 698 (704) § 12. For analogous section, see P. & A. Code § 4481, which was R. S. Bates, § 1536-696; 99 v. 566, § 160; 96 v. 73, § 160; and P. & A. Code § 7690-2, which was 101 v. 154.

Appointments,  
how made.

SECTION 486-13. The head of a department, officer or institution in which a position in the classified service is to be filled shall notify the commission of the fact, and the commission shall, except as provided in sections 486-14 and 486-15 of the General Code, certify to the appointing officer thereof the names and addresses of the three candidates standing highest on the eligible list for the class or grade to which said position belongs. In the event that an eligible list becomes exhausted, through inadvertence or otherwise, and until a new list can be created, or when no eligible list for such position exists, names may be certified from eligible lists most appropriate for the group or class in which the position to be filled is classified. A person certified from an eligible list more than three times to the same appointing officer for the same or similar positions, may be omitted from future certifications to such officer, provided that certification for a temporary appointment shall not be counted as one of such certifications.

Appointments to all positions in the classified service, as herein defined, that are not filled by promotion, transfer or reduction, as provided for in this act and the rules of the commission prescribed thereunder, shall be made only from those persons whose names are certified to the appointing officer in accordance with the provisions of this act [G. C. §§ 486-1 to 486-31], and no employment, except as provided in this act, shall be otherwise given in the classified service of this state or any political subdivision thereof. The appointing officer shall notify the commission of each position to be filled and shall fill such position by appointment of one of the three persons certified to him as provided in this act. Forthwith, upon such appointment and employment, each appointing officer shall report to the proper civil service commission the name of such appointee or employee, the title and character of his office, the duties of same, the date of the commencement of same, and the salary or compensation thereof, and such other information as the commission requires in order to keep the roster herein mentioned. All original and promotional appointments shall be for a probationary period of not to exceed three months to be fixed by the rules of the commission, and no appointment or promotion shall be deemed finally made until the appointee has satisfactorily served his probationary period. At the end of the probationary period the appointing officer shall transmit to the commission a record of the employe's service, and if such service is unsatisfactory, the employe may, with the approval of the commission, be removed or reduced without restriction; but dismissal or reduction may be made during such period as is provided for in section 486-17 and 486-17a of the General Code. Any person who is appointed to a position in the classified service under the provisions of this act, except temporary and exceptional appointments, shall be or become forthwith a resident of the state.



566, § 160; 96 v. 73, § 160; P. & A. Code § 4482, which was R. S. Bates, § 1536-697; 99 v. 566, § 161; 96 v. 73, § 161; P. & A. Code § 7690-3, which was 101 v. 154; and P. & A. Code § 7690-4, which was 101 v. 154.

SECTION 486-14. Positions in the classified service may be filled without competition as follows:

Temporary and  
and exceptional  
appointments.

1. Whenever there are urgent reasons for filling a vacancy in any position in the classified service and the commission is unable to certify to the appointing officer, upon requisition by the latter, a list of persons eligible for appointment after a competitive examination, the appointing officer may nominate a person to the commission for non-competitive examination, and if such nominee shall be certified by the commission as qualified after such non-competitive examination, he may be appointed provisionally to fill such vacancy until a selection and appointment can be made after competitive examination; but such provisional appointment shall continue in force only until regular appointment can be made from eligible lists prepared by the commission, and such eligible lists shall be prepared within ninety days thereafter. In case of an emergency an appointment may be made without regard to the rules of this act [G. C. §§ 486-1 to 486-31], but in no case to continue longer than thirty days, and in no case shall successive appointments be made; provided, however, that interim or temporary appointments, made necessary by reason of sickness or disability of regular officers, employes or subordinates shall continue only during such period of sickness or disability, subject to rules to be provided for by the commission.

2. In case of a vacancy in a position in the classified service where peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable and that the position can best be filled by a selection of some designated person of high and recognized attainments in such qualities, the commission may suspend the provisions of the statute requiring competition in such case, but no suspension shall be general in its application to such place, and all such cases of suspension shall be reported in the annual report of the commission with the reasons for the same.

3. Where the services to be rendered by an appointee are for a temporary period, not to exceed one month, and the need of such service is important and urgent, the appointing officer may select for such temporary service any person on the proper list of those eligible for permanent appointment. Successive temporary appointments to the same position shall not be made under this provision. The acceptance or refusal by an eligible of a temporary appointment shall not affect his standing on the register for permanent employment; nor shall the period of temporary

service be counted as a part of the probationary service in case of subsequent appointment to a permanent position.

HISTORY.—106 v. 400 (409); 103 v. 698 (705), § 14. For an analogous section, see P. & A. Code § 4488, which was R. S. Bates, § 1536-702; 99 v. 567, § 165; 96 v. 75, § 166; and P. & A. Code § 7690-6, which was 101 v. 154.

Promotions;  
examinations.

SECTION 486-15. Vacancies in positions in the classified service shall be filled in so far as practicable by promotions. The commission shall provide in its rules for keeping a record of efficiency for each employe in the classified service, and for making promotions in the classified service on the basis of merit, to be ascertained as far as practicable by promotional examinations, by conduct and capacity in office, and by seniority in service; and shall provide that vacancies shall be filled by promotion in all cases where, in the judgment of the commission, it shall be for the best interest of the service so to fill such vacancies. All examinations for promotions shall be competitive. In promotional examinations efficiency and seniority in service shall form a part of the maximum mark attainable in such examination. In all cases where vacancies are to be filled by promotion, the commission shall certify to the appointing authority only the name of the person having the highest rating. The method of examination for promotions, the manner of giving notice thereof, and the rules governing the same shall be in general the same as those provided for original examinations, except as otherwise provided herein.

HISTORY.—106 v. 400 (410); 103 v. 698 (706), § 15. For an analogous section, see P. & A. Code § 4489, which was R. S. Bates, § 1536-695; 99 v. 566, § 159; 96 v. 73, § 159; see, also, R. S. § 1545-141; and P. & A. Code § 7690-2, which was 101 v. 154.

Transfers and  
reinstatements.

SECTION 486-16. With the consent of the commission, a person holding an office or position in the classified service may be transferred to a similar position in another office, department or institution having the same pay and similar duties; but no transfer shall be made from an office or position in one class to an office or position in another class, nor shall a person be transferred to an office or position for original entrance to which there is required by this act [G. C. §§ 486-1 to 486-31], or the rules adopted pursuant thereto, an examination involving essential tests or qualifications or carrying a salary different from or higher than those required for original entrance to an office or position held by such person.

Any person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct on his part may, with the consent of the commission, be reinstated within one year from the date of such separation to a vacancy in the same or similar office or position in the same department; and whenever any permanent office or position in the classified service is abolished or made unnecessary, the person holding such office or position shall be placed by the commission at the head of an appropriate eligible list, and for

a period of not to exceed one year shall be certified to an appointing officer as in the case of original appointments.

HISTORY.—106 v. 400 (411); 103 v. 698 (709), § 16.

SECTION 486-17. No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against by an appointing officer for religious or political reasons or affiliations. In all cases of reduction, lay-off or suspension of an employe or subordinate, whether appointed for a definite term or otherwise, the appointing authority shall furnish such employe or subordinate with a copy of the order of lay-off, reduction or suspension and his reasons for the same, and give such employe or subordinate a reasonable time in which to make and file an explanation. Such order together with the explanation, if any, of the subordinate shall be filed with the commission. Nothing in this act contained shall limit the power of an appointing officer to suspend without pay, for purposes of discipline, an employe or subordinate for a reasonable period, not exceeding thirty days; provided, however, that successive suspensions shall not be allowed, and provided further that the provisions of this section shall not apply to temporary and exceptional appointments made under the authority of section 486-14 of the General Code.

Reductions,  
lay-offs and  
suspensions.

HISTORY.—106 v. 400 (411); 103 v. 698 (707), § 17. For an analogous section, see P. & A. Code § 4412, which was R. S. § 2115; R. S. Bates, § 1536-727; 102 v. 44; 97 v. 331; 95 v. 423; 90 v. 83; 85 v. 60; 66 v. 202, § 305; P. & A. Code § 4485, which was R. S. Bates, § 1536-698; 99 v. 567, § 162; 96 v. 74, § 162; see also R. S. § 1545-24; and P. & A. Code § 4487, which was R. S. Bates, § 1536-703; 101 v. 297; 99 v. 567, § 166; 96 v. 75, § 167.

SECTION 486-17a. The tenure of every officer, employ [employe] or subordinate in the classified service of the state, the counties, cities or city school districts thereof, holding a position under the provisions of this act, shall be during good behavior and efficient service; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act [G. C. §§ 486-1 to 486-31] or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office.

Tenure of of-  
fice; removals.

In all cases of removal the appointing authority shall furnish such employe or subordinate with a copy of the order of removal and his reasons for the same, and give such officer, employe or subordinate a reasonable time in which to make and file an explanation. Such order with the explanation, if any, of the employe or subordinate shall be filed with the commission. Any such employe or subordinate so removed may appeal from the decision or order of such appointing authority to the state or municipal commission, as the case may be, within ten days from and after the date of such removal, in which event the commission shall forthwith notify the appointing authority and



shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm or modify the judgment of the appointing authority, and the commission's decision shall be final; provided, however, that in case of the removal of a chief of police or chief of the fire department of a municipality an appeal may be had from the decision of the municipal commission to the court of common pleas of the county in which such municipality is situated to determine the sufficiency of the cause of removal. Such appeal shall be taken within ten days from the finding of the commission.

**HISTORY.**—106 v. 400 (412). For an analogous section, see P. & A. Code § 4412, which was R. S. § 2115; Bates R. S. § 1536-727; 102 v. 44; 97 v. 331; 95 v. 423; 90 v. 88; 85 v. 60; 66 v. 202, § 305; P. & A. Code § 4477, which was R. S. Bates, § 1536-692; 96 v. 72, § 156; see also R. S. §§ 1515-23 and 1545-141; P. & A. Code § 4484, which was R. S. Bates, § 1536-698; 102 v. 44; 99 v. 567, § 162; 93 v. 74, § 162; see also R. S. § 1515-112; P. & A. Code § 4485, which was R. S. Bates, § 1536-698; 99 v. 567, § 162; 96 v. 74, § 162; see also R. S. § 1545-24; P. & A. Code § 4487, which was R. S. Bates, § 1536-703; 101 v. 297; 99 v. 567, § 166; 96 v. 75, § 167; P. & A. Code § 4505, which was R. S. Bates, § 1536-722; 101 v. 297; 96 v. 79, § 186; and P. & A. Code § 7693-5, which was 101 v. 154.

A removal under this section can be made only by following the procedure therein outlined. Such procedure is not complete unless the order of removal with the explanation, if any, of the subordinate is filed with the civil service commission. The ten day period in which an appeal to the commission lies begins to run on the date of such filing.

The reasons to be furnished to the employe by the appointing authority and grounds for removal, although not required to be as specific and particular as an indictment, must give the employe such notice of the character of the charges against him as to enable him to make his explanation. In case of general charges, such as incompetency, the nature of the incompetency must be set forth. In the case particular acts such as immoral conduct, negligence of duty, etc., such acts should be described and identified with sufficient particularity as to enable the subordinate to recognize and explain them. Op. Atty. Gen. (1918), p. 237.

Efficiency; establishment of grades.

**SECTION 486-18.** The commission shall from time to time make investigations for the purpose of ascertaining the duties imposed by law and practice upon each officer and employe or subordinate in the classified service, the manner in which such duties are performed, the cost thereof, and such other facts as will enable the commission to determine the efficiency of such officers and employes and subordinates. The commission shall establish grades in the classified service, based upon similarity of duties and salaries; shall standardize employment in each grade; shall prescribe factors or quantities to be used in marking the relative efficiency of each officer and employe or subordinate in such grades; shall fix standards of efficiency to be maintained by officers and employes or subordinates; and shall keep a record of the efficiency markings for each officer and employe or subordinate in the classified service.

Duties of officers and employes; efficiency records.

All officers and employes or subordinates in the state, the several counties, cities and city school districts thereof, whether in the classified service or not, shall promptly and correctly report to the commission any information required

by the rules of the commission relative to the conduct, capacity, and efficiency of any officer, employe or subordinate in the classified service under his supervision. The records, reports and markings of efficiency in each department, office and institution shall be open at all times to inspection by the commission and shall be subject to review and correction by the commission. The efficiency records of the commission respecting each department, board, commission, or institution; shall be open to the heads of such department, board, commission or institution; and each officer and employe or subordinate shall have the right to be informed of the efficiency markings recorded for him by the commission.

The commission shall report to the officer in charge of a department, board, commission or institution its findings and recommendations relative to increasing the efficiency therein; and all cases of failure of officers, employes or subordinates therein to maintain a satisfactory efficiency record, shall be sufficient ground for the dismissal of any such officer, employe or subordinate. Such reports shall be deemed public records.

HISTORY.—106 v. 400 (412); 103 v. 698 (707), §18.

SECTION 486-19. The mayor or other chief appointing authority of each city in the state shall appoint three persons, one for a term of two years, one for four years, and one for six years, who shall constitute the municipal civil service commission of such city and of the city school district in which such city is located; provided, however, that members of existing municipal commissions shall continue in office for the terms for which they have been appointed and until their successors are appointed and have qualified. Each alternate year thereafter the mayor or other chief appointing authority shall appoint one person, as successor of the member whose term expires, to serve six years and until his successor is appointed and qualified. A vacancy shall be filled by the mayor or other chief appointing authority of a city for the unexpired term. At the time of any appointment not more than two commissioners shall be adherents of the same political party. Such municipal commission shall prescribe, amend and enforce rules not inconsistent with the provisions of this act for the classification of positions in the civil service of such city and city school district; for examinations and registrations therefor; and for appointments, promotions, removals, transfers, lay-offs, suspensions, reductions and reinstatements therein; and for standardizing positions and maintaining efficiency therein. Said municipal commission shall have and exercise all other powers and perform all other duties with respect to the civil service of such city and city school district, as herein prescribed and conferred upon the state civil service commission with respect to the civil service of the state; and all authority granted to the state commission with respect to the service under its jurisdiction

Municipal civil service commission; appointment, term, duties, vacancies, removals.

shall, except as otherwise provided in this act, be held to grant the same authority to the municipal commission with respect to the service under its jurisdiction. The procedure applicable to reductions, suspensions and removals, as provided for in section 486-17 and 486-17a of the General Code, shall govern the civil service of municipalities. The expense and salaries of any of such municipal commission shall be determined by the council of such city and a sufficient sum of money shall be appropriated each year to carry out the provisions of this act [G. C. §§ 486-1 to 486-31] in such city.

If the appointing authority of any such city fails to appoint a civil service commission or commissioner, as provided by law, within sixty days after he has the power to so appoint, or after a vacancy exists, the state commission shall make the appointment, and such appointee shall hold office until the expiration of the term of the appointing authority of such city and until the successor of such appointee is appointed and qualified. If any such municipal commission fails to prepare and submit such rules and regulations in pursuance of the provisions of this act [G. C. §§ 486-1 to 486-31] within six months after this act goes into effect, the state commission shall forthwith make such rules. The provisions of this act shall in all other respects, except as provided in this section, be in full force and effect in such cities.

It shall be the duty of each municipal commission to make reports from time to time, as the state commission may require, of the manner in which the law and the rules and regulations thereunder have been and are being administered, and the results of their administration in such city and city school district. A copy of the annual report of each such municipal commission shall be filed in the office of the state commission as a public record.

Whenever the state commission shall have reason to believe that a civil service commission of any city is violating or is failing to perform the duties imposed upon it by law, or that any member of such municipal commission is wilfully or through culpable negligence violating the provisions of the law or failing to perform his duties as a member of such commission, it may institute an investigation, and if it shall find any such violation or failure to perform the duties [duties] imposed by law, it shall make a report of such violation in writing to the chief executive authority of such city, which report shall be a public record. The chief executive authority of such city may at any time remove any municipal civil service commissioner for inefficiency, neglect of duty, or malfeasance in office, having first given to such commissioner a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense, and any such act of removal shall be final.

The mayor shall have the exclusive right to suspend the chief of the police department or the chief of the fire de-



partment for incompetence, gross neglect of duty, gross immorality, habitual drunkenness, failure to obey orders given him by the proper authority or for any other reasonable and just cause. If either the chief of police or chief of the fire department is so suspended the mayor forthwith shall certify such fact, together with the cause of such suspension, to the municipal civil service commission, who within five days from the date of receipt of such notice shall proceed to hear such charges and render judgment thereon, which judgment may affirm, disaffirm or modify the judgment of the appointing officer, and an appeal may be had from the decision of the commission to the court of common pleas as is provided for in section 486-17a of the General Code to determine the sufficiency of the cause of removal.

**HISTORY.**—106 v. 400 (413); 103 v. 698 (708), § 19. For an analogous section, see P. & A. Code § 4381, which was R. S. Bates, § 1536-688; 96 v. 71, § 152; see also R. S. § 1749; P. & A. Code § 4478, which was R. S. Bates, § 1536-693; 99 v. 565, § 157; 96 v. 72, § 157; see also R. S. § 1545-165a; P. & A. Code § 4487, which was R. S. Bates, § 1536-703; 101 v. 297; 99 v. 567, § 166; 96 v. 75, § 167; P. & A. Code § 4490, which was R. S. Bates, § 1536-706; 96 v. 76, § 170; P. & A. Code § 4505, which was R. S. Bates, § 1536-722; 101 v. 297; 96 v. 79, § 186; and P. & A. Code § 7690-2, which was 101 v. 154.

The money necessary to carry out the provisions of the civil service act in a city and city school district is to be appropriated by the council and paid from the city treasury. The board of education has no authority to contribute thereto out of the funds of the school district. Op. Atty. Gen. (1918) p. 523.

**SECTION 486-20.** For the purpose of administration the state civil service commission may divide the state into civil service districts and establish an officer in each of such districts. The commission may place in charge of each such district an assistant whose duties and compensation shall be determined and fixed by the rules of the commission.

Civil service districts.

**HISTORY.**—106 v. 400 (415); 103 v. 698 (709), § 20.

**SECTION 486-21.** After the taking effect of this act it shall be unlawful for the auditor of state, or for any fiscal officer of any county, city or city school district thereof, to draw, sign or issue or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state, or of any county, city or city school district thereof, to pay any salary or compensation to any officer, clerk, employe, or other person in the classified service unless an estimate, payroll or account for such salary or compensation containing the name of each person to be paid, shall bear the certificate of the state civil service commission, or, in case of the service of a city, the certificate of the municipal service commission of such city, that the persons named in such estimate, payroll or account have been appointed, promoted, reduced, suspended, or laid off or are employed in pursuance of this act [G. C. §§ 486-1 to 486-31] and the rules adopted thereunder.

Pay rolls.

Any sum paid contrary to the provisions of this section may be recovered from any officer or officers making such payment in contravention of the provisions of law and

of the rules made in pursuance of law; or from any officer signing or countersigning or authorizing the signing or countersigning of any warrant for the payment of the same, or from the sureties on his official bond, in an action in the courts of the state, maintained by a citizen resident therein. All moneys recovered in any action brought under the provisions of this section must, when collected, be paid into the treasury of the state or appropriate civil division thereof, except that the plaintiff in any action shall be entitled to recover his own taxable costs of such action.

HISTORY.—106 v. 403 (415); 103 v. 698 (710), § 21. For an analogous section, see P. & A. Code § 4491, which was R. S. Bates, § 1536-717; 96 v. 78, § 181; and P. & A. Code, § 4504, which was R. S. Bates, § 1536-716; 96 v. 78, § 180.

In any city school district of the state it is unlawful for the fiscal officer of such city school district to issue any warrant on the disbursing officer of such city school district to pay any salary or compensation to any employe in the classified service unless such pay-roll has been approved by the municipal civil service commission of the city in which such city school district is located. Op. Atty. Gen. (1920), p. 80.

Investigations  
by commis-  
sion.

SECTION 486-22. Whenever a civil service commission shall have reason to believe that any officer, board, commission, head of a department, or person having the power of appointment, lay-off, suspension or removal, has abused such power by making an appointment, lay-off, reduction, suspension, or removal in violation of the provisions of this act [G. C. §§ 486-1 to 486-31]; it shall be the duty of the commission to make an investigation, and if it shall find that such violation of the provisions or the intent and spirit of this act has occurred, it shall make a report thereof to the governor, or in the case of a municipal officer or employe to the mayor or other chief appointing authority, who shall have the power to remove forthwith such guilty officer, board, commission, head of department, or person; an opportunity first having been given to such officer, employe or subordinate of being publicly heard in person or by counsel in his own defense, and such action of removal by the governor, mayor or other chief appointing authority shall be final except as otherwise provided herein.

HISTORY.—106 v. 400 (416); 103 v. 698 (710), § 22. For an analogous section, see P. & A. Code § 4489, which was R. S. Bates, § 1536-705; 96 v. 76, § 169.

Political assess-  
ments; polit-  
ical activity.

SECTION 486-23. No officer, employe or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution or payment from any officer, employe, or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; nor shall any officer

or employe in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.

**HISTORY.**—106 v. 400 (416); 103 v. 698 (710), § 23. For an analogous section, see P. & A. Code § 4497, which was R. S. Bates, § 1536-713; 96 v. 77, § 177; P. & A. Code § 4500, which was R. S. Bates, § 1536-711; 96 v. 77, § 175; and P. & A. Code § 4501, which was R. S. Bates, § 1536-712; 96 v. 77, § 176.

The provisions of Section 486-23, General Code, apply to persons temporarily occupying positions in the classified service under the provisions of Paragraph 1 of Section 486-14, General Code. Op. Atty. Gen. (1920), p. 491.

**SECTION 486-24.** No person or officer shall wilfully or corruptly by himself or in cooperation with one or more persons defeat, deceive, or obstruct any person in respect of his or her right of examination, appointment or employment according to this act, or to any rules or regulations prescribed pursuant thereto; or wilfully or corruptly, falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this act [G. C. §§ 486-1 to 486-31], or aid in so doing; or wilfully or corruptly make any false representations concerning the same, or concerning the person examined; or wilfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified; or personate any other person, or permit or aid in any manner any person to personate him, in connection with any examination, registration or appointment or application or request to be examined, registered or appointed; or who shall furnish any false information about himself, or any other person, in connection with any examination, registration or appointment or application or request to be examined, registered or appointed.

Frauds in examination prohibited.

**HISTORY.**—106 v. 400 (416); 103 v. 698 (711), § 24. For an analogous section, see P. & A. Code § 4496, which was R. S. Bates, § 1536-703; 96 v. 76, § 172.

**SECTION 486-25.** No applicant for appointment or promotion in the classified service shall, directly or indirectly, pay or promise to pay any money or other valuable thing, nor shall he ask or receive any recommendation or assistance from any person, upon the consideration of any political service to be rendered, for or on account of his appointment or promotion, or proposed appointment or promotion.

Payment for places prohibited.

**HISTORY.**—106 v. 400 (417); 103 v. 698 (711), § 25. For an analogous section, see P. & A. Code § 4498, which was R. S. Bates, § 1536-709; 96 v. 77, § 173; and P. & A. Code § 4499, which was R. S. Bates, § 1536-710; 96 v. 77, § 174.

**SECTION 486-26.** No officer or employe of the state, the several counties, cities and city school districts thereof shall appoint, promote, reduce, suspend, layoff, discharge,

Abuse of political power.



or in any manner change the official rank or compensation of any officer, employe or subordinate in the classified service, or promise or threaten to do so, for giving or withholding, or neglecting to make any contribution of money or other valuable thing for any party or political purpose, or for refusal or neglect to render any party or political service.

HISTORY.—106 v. 400 (417); 103 v. 698 (711). § 26. For an analogous section, see P. & A. Code § 4502, which was R. S. Bates, § 1536-714; 96 v. 78, § 178.

Abuse of political influence.

SECTION 486-27. No person who holds any public office, or who has been nominated for, or who seeks a nomination or appointment to any public office, shall corruptly use or promise to use either directly or indirectly, any official authority or influence in order to secure or aid any person in securing for himself or another any office or employment in the classified service, or any promotion or increase of salary therein, as a reward for political influence or service. Nor shall any person, by means of threats or coercion, induce or seek to induce anyone in the classified service to resign his position or to waive his right to certification, appointment or promotion.

HISTORY.—106 v. 400 (417); 103 v. 698 (712), § 27. For an analogous section, see P. & A. Code § 4503, which was R. S. Bates, § 1536-715; 96 v. 78, § 179; see, also, R. S. §§ 1545-20 and 1545-109.

Penalty for violations.

SECTION 486-28. Whoever, after a rule has been duly established and published by any civil service commission according to the provisions of this act [G. C. §§ 486-1 to 486-31], makes an appointment to office or selects a person for employment contrary to the provisions of such rule, or wilfully refuses or neglects otherwise to comply with or to conform to the provisions of this act, or wilfully violates any of such provisions, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court. If any person so convicted shall hold any public office or place of public employment such office or position shall by virtue of such conviction be rendered vacant.

HISTORY.—106 v. 400 (417); 103 v. 698 (712), § 28. For an analogous section, see P. & A. Code § 4496, which was R. S. Bates, § 1533-708; 96 v. 76, § 172; P. & A. Code § 12895, which was R. S. Bates, § 1536-719; 99 v. 565, § 158; 96 v. 79, § 183; and P. & A. Code § 12896, which was R. S. Bates, §§ 1536-720 and 1536-721; 96 v. 79, §§ 184 and 185.

Taxpayers' right of action.

SECTION 486-29. The right of any taxpayer to bring an action to restrain the payment of compensation to any person appointed to or holding any office or place of employment in violation of provisions of this act [G. C. §§ 486-1 to 486-31], shall not be limited or denied by reason of the fact that said office or place of employment shall have been classified as, or determined to be classified as, not subject to competitive examination; provided, however,

that any judgment or injunction granted or made in any such action shall be prospective only, and shall not affect payments already made or due to such persons by the proper disbursing officers, in accordance with the civil service rules in force at the times of such payments.

HISTORY.—106 v. 400 (418); 103 v. 698 (712), § 29.

SECTION 486-30. Prosecutions for the violation of the provisions of this act [G. C. §§ 486-1 to 486-31], or the rules and regulations of the state commission established in conformity thereto, shall be instituted by the attorney-general or by the state commission acting through special counsel, or by the county prosecutor for the county in which the offense is alleged to have been committed; and prosecutions for violations of this act and the rules and regulations of any municipal commission by any officer or employe of such city, shall be instituted by such municipal commission through the legal department of such city or by such municipal commission acting through special counsel.

Who shall prosecute.

HISTORY.—106 v. 400 (418); 103 v. 698 (712), § 30.

SECTION 486-31. All officers, employes and subordinates in the classified service of the state, the several counties, cities and city school districts thereof, holding their positions under existing civil service laws, and who are holding such positions by virtue of having taken a regular competitive examination as provided by law, shall, when this act takes effect, be deemed appointees within the provisions of this act; but no person holding a position in the classified service by virtue of having taken a non-competitive examination shall be deemed to have been appointed or to be an appointee in conformity with the provisions of this act; provided, however, that all persons who have served the state or any political subdivision thereof continuously and satisfactorily for a period of not less than seven years next preceding January 1, 1915, shall be deemed appointees within the provisions of this act [G. C. §§ 486-1 to 486-31].

Schedule.

The name of each officer, employe and subordinate holding a position in the classified service of the state, the counties, cities and city school districts thereof at the time this act takes effect, who has not passed a regular competitive examination and who has not been in the service seven years as herein provided, shall, within ten days after this act becomes effective, be reported by the appointing authority to the commission and shall be certified to the appointing authority in addition to the three candidates for appointment to such position. If any such person is reappointed, he shall be deemed to have been appointed under the provisions of this act [G. C. §§ 486-1 to 486-31]. If no eligible list exists such person may be retained as a provisional employe until such time, consistent with reasonable diligence, as the commission can prepare eligible

lists when such position shall be filled as prescribed in this act; provided that nothing contained in this section shall be deemed to vacate the office of existing chiefs of police departments or chiefs of fire departments of municipalities. All existing eligible lists of persons who have taken regular competitive examinations shall continue in force for the term of eligibility to be fixed by the commission as provided herein. All property of the existing state commission shall become the property of the commission to be appointed hereunder.

HISTORY.—106 v. 400 (418); 103 v. 638 (713), § 31.



## CHAPTER 2

### DEPARTMENT OF EDUCATION

#### SUPERINTENDENT OF PUBLIC INSTRUCTION AS DIRECTOR OF EDUCATION

##### SECTION

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##### SECTION

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- 1851-3. Superintendent of public instruction to inspect and make report on teaching, discipline and school equipment in state institutions.
- 2250. Salaries of appointive state officers and employes.
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- 2264-2. Definition of terms.
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Administrative  
departments  
created.

SECTION 154-3. The following administrative departments are created:

The department of finance, which shall be administered by the director of finance, hereby created;

The department of commerce, which shall be administered by the director of commerce, hereby created;

The department of highways and public works, which shall be administered by the superintendent of public works as director thereof;

The department of agriculture, which shall be administered by the director of agriculture, hereby created;

The department of health, which shall be administered by the director of health, hereby created;

The department of industrial relations, which shall be administered by the director of industrial relations, hereby created;

The department of education, which shall be administered by the superintendent of public instruction, as director thereof;

The department of public welfare, which shall be administered by the director of public welfare, hereby created.

The director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department.

HISTORY. — 109 v. 105.

Appointment of  
directors.

SECTION 154-4. Each director whose office is created by section 154-3 of the General Code shall be appointed by the governor by and with the advice and consent of the senate, and shall hold his office during the pleasure of the governor.

HISTORY. — 109 v. 106.

Assistant directors; vacancies.

SECTION 154-5. In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in section 154-6 of the General Code, or as the head of one of the divisions created within such department as authorized by section 154-8 of the General Code. When a vacancy occurs in the office of director of any department, the assistant director thereof shall act as director of the department until such vacancy is filled.

HISTORY. — 109 v. 106.

Offices created  
in the several  
departments.

SECTION 154-6. Offices are created within the several departments as follows:

\* \* \*

In the Department of Education

Chiefs of divisions as follows:

Examination and licensing

Film censorship

\* \* \*

HISTORY. — 109 v. 106.

SECTION 154-7. The officers mentioned in sections 154-5 and 154-6 of the General Code shall be appointed by the director of the department in which their offices are respectively created, and shall hold office during the pleasure of such director.

Appointment of officers; term.

HISTORY. — 109 v. 107.

SECTION 154-8. The officers mentioned in sections 154-5 and 154-6 of the General Code shall be under the direction, supervision and control of the directors of their respective departments, and shall perform such duties as such directors shall prescribe.

Supervision and control of officers.

With the approval of the governor, the director of each department shall establish divisions within his department, and distribute the work of the department among such divisions. Each officer created by section 154-6 of the General Code shall be the head of such a division.

With the approval of the governor, the director of each department shall have authority to consolidate any two or more of the offices created in his department by section 154-6 of the General Code, or to reduce the number of or create new divisions therein.

The director of each department may prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employes, the performance of its business and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto.

HISTORY. — 109 v. 107.

SECTION 154-14. Each officer whose office is created by sections 154-3, 154-5 and 154-6 of the General Code shall, before entering upon the duties of his office, take and subscribe an oath of office as provided by law and give bond, conditioned according to law, with security to be approved by the governor in such penal sum as shall be fixed by the governor, not less in any case than ten thousand dollars. Such bond and oath shall be filed in the office of the secretary of state.

Bond and oath of office; bond may be required of employe.

The director of each department may, with the approval of the governor, require any chief of a division created under the authority of this chapter, or any officer or employe in his department, to give like bond in such amount as the governor may prescribe. The premium, if any, on any bond required or authorized by this section may be paid from the state treasury.

HISTORY. — 109 v. 108.

SECTION 154-15. The director of each department may, with the approval of the governor, establish and appoint advisory boards to aid in the conduct of the work of his department or any division or divisions thereof. Such advisory boards shall exercise no administrative function, and their members shall receive no compensation, but may receive their actual and necessary expenses.

Advisory boards may be provided.

HISTORY. — 109 v. 108.



Officers shall devote entire time and hold no other office.

SECTION 154-16. Each officer whose office is created by sections 154-3, 154-5 and 154-6 of the General Code shall devote his entire time to the duties of his office, and shall hold no other office or position of profit. In addition to his salary provided by law, each such officer and each member of the boards and commissions in the departments created by this chapter shall be entitled to his actual and necessary expenses incurred in the performance of his official duties.

HISTORY. — 109 v. 109.

Central office shall be in Columbus.

SECTION 154-17. Each department shall maintain a central office in the city of Columbus. The director of each department may, in his discretion and with the approval of the governor, establish and maintain, at places other than the seat of government, branch offices for the conduct of any one or more functions of his department.

HISTORY. — 109 v. 109.

Seal for each department; specifications.

SECTION 154-18. Each department shall adopt and keep an official seal, which shall have engraved thereon the coat of arms of the state as described in section thirty of the General Code, shall be one and three-fourths inches in diameter, and shall be surrounded by the proper name of the department, to which may be added the title of any division, board or commission within the department, if the director of the department shall so prescribe. Such seal may be affixed to any writs and authentications of copies of records and official papers, and to such other instruments as may be authorized by law or prescribed by the proper authority in any department to be executed. When so authenticated, any copy of such record, official paper, or other instrument shall be received in evidence in any court in lieu of the original.

Journals and records.

Each department shall provide for the keeping, within such department, of such records and journals as may be necessary to exhibit its official actions and proceedings.

HISTORY. — 109 v. 109.

Employment subject to civil service laws.

SECTION 154-19. Each department is empowered to employ, subject to the civil service laws in force at the time the employment is made, the necessary employes, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation. Nothing in this chapter shall be construed to amend, modify or repeal the civil service laws of the state, except as herein expressly provided.

All offices created by sections 154-5 and 154-6 of the General Code shall be in the unclassified civil service of the state.

HISTORY. — 109 v. 109.

Daily hours of service by employes.

SECTION 154-20. All employes in the several departments shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excepted in cases in which, in the judg-

ment of the director, the public service will not thereby be impaired.

Each employe in the several departments shall be entitled during each calendar year to fourteen days leave of absence with full pay. In special and meritorious cases where to limit the annual leave to fourteen days in any one calendar year would work peculiar hardship, it may, in the discretion of the director of the department, be extended. No employe in the several departments, employed at a fixed compensation, shall be paid for any extra services, unless expressly authorized by law.

Two weeks absence, on pay, each year.

HISTORY. — 109 v. 109.

SECTION 154-21. Under the direction of the governor, the directors of departments shall devise a practical and working basis for cooperation and coordination of work and for the elimination of duplication and overlapping functions. They shall, so far as practicable, cooperate with each other in the employment of services and the use of quarters and equipment. The director of any department may empower or require an employe of another department, subject to the consent of the superior officer of the employe, to perform any duty which he might require of his own subordinates.

Cooperation and coordination of work under direction of governor.

HISTORY. — 109 v. 110.

SECTION 154-22. Each department shall make and file a report of its transactions and proceedings at the time and in the manner prescribed by section 2264-1 of the General Code.

Report of each department.

HISTORY. — 109 v. 110.

SECTION 154-23. Whenever power is vested in any of the departments created by this chapter, or in any other state department, board or commission, to inspect, examine, secure data or information, or to procure assistance from another department, office or institution, a duty is hereby imposed upon the department, office or institution, upon which demand is made, whether created by this chapter or otherwise, to make such power effective.

Power to inspect, examine, etc.

HISTORY. — 109 v. 110.

SECTION 154-24. Whenever rights, powers or duties which have heretofore been vested in or exercised by any officer, board, commission, institution of department, or any deputy, inspector or subordinate officer thereof, are, by this chapter, transferred, either in whole or in part, to or vested in a department created by this chapter, or any other department, office or institution, such rights, powers and duties shall be vested in, and shall be exercised by the department, office or institution to which the same are hereby transferred, and not otherwise; and every act done in the exercise of such rights, powers and duties shall have the same legal effect as if done by the former officer, board, commission, institution or department, or any deputy, inspector,

Rights, powers and duties heretofore vested or exercised by board, officer, commission, etc., transferred.

Rights, powers, duties, etc., of persons, firms, corporations, etc.

or subordinate officer thereof. Every person, firm and corporation shall be subject to the same obligations and duties and shall have the same rights arising from the exercise of such rights, powers and duties as if such rights, powers and duties were exercised by the officer, board, commission, department or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this chapter. Every person, firm and corporation shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any such obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in, the exercise of such right, power or duty by the officer, board, commission or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this chapter. Every officer and employe shall, for any offense, be subject to the same penalty or penalties, civil or criminal, as are prescribed by existing law for the same offense by any officer or employe whose powers or duties devolve upon him under this chapter.

HISTORY.—109 v. 110.

Service of notice and making reports.

SECTION 154-25. Wherever reports or notices are now required to be made or given, or papers or documents furnished or served by any person to or upon an officer, board, commission or institution, or deputy, inspector or subordinate thereof, abolished by this chapter, the same shall be made, given, furnished, or served in the same manner to or upon the department, office or institution upon which are devolved by this chapter the rights, powers and duties now exercised or discharged by such officer, board, commission or institution, or deputy, inspector or subordinate thereof; and every penalty for failure so to do shall continue in effect.

HISTORY.—109 v. 111.

Offices, boards, commissions, etc., abolished.

SECTION 154-26. The following offices, boards, commissions, arms and agencies of the state government heretofore created by law are hereby abolished:

\* \* \*

The state board of library commissioners,

The librarian appointed by the state board of library commissioners,

The library organizer appointed by the state board of library commissioners,

The director of the legislative reference department,

The state geologist,

\* \* \*

The board of censors of motion picture films under the authority and supervision of the industrial commission of Ohio,

\* \* \*

HISTORY.—109 v. 111.



SECTION 154-46. The department of education shall have all powers and perform all duties vested by law in the industrial commission of Ohio and the board of censors of motion picture films by sections 871-48 to 871-53, both inclusive, of the General Code.

Department of education, powers and duties.

The following boards and committees shall be attached to the department of education:

Boards and committees attached to department.

The state board of accountancy, the state medical board, the nurses examining committee, the state board of optometry, the state board of pharmacy, the state dental board and the state board of embalming examiners.

Such boards and their officers shall continue to exercise their functions as heretofore. It shall be the duty of the department of education to recommend standards as to preliminary education; to recommend methods of determining the standing of professional schools and colleges; to recommend methods of conducting examinations and hearings; and to recommend methods of enforcing the laws which they are respectively required to administer. Such boards are hereby severally authorized to delegate to the department of education any of the powers or duties in them vested by law with respect to the matters and things concerning which the department is herein directed to make recommendations; and the department of education is hereby authorized and required to exercise any such power or perform any such duty so delegated with like effect in law as if the same had been exercised by the board so delegating such power. Nothing in this chapter shall be so construed or applied as to compel the delegation of any such powers or duties.

HISTORY. — 109 v. 121.

SECTION 154-47. An advisory board of three members is hereby created in the department of education, to be known as the advisory board of film censorship. The members of this board shall be appointed by the governor, to serve during his pleasure, and shall receive no compensation, but shall be entitled to their actual and necessary expenses incurred in the performance of their official duties. Such board shall assist and advise the department of education in the examination and censorship of motion picture films.

Advisory board of film censorship; appointment, term, compensation.

HISTORY. — 109 v. 122.

SECTION 154-48. The department of education shall have all the powers and perform all the duties now vested in the superintendent of public instruction and those vested in the state geologist.

Further powers and duties.

HISTORY. — 109 v. 122.

SECTION 154-49. A state board of vocational education is hereby established in the department of education, in order to carry out the provisions of the law accepting the acts of Congress providing for cooperation with the

State board of vocational education established; duties; employment of assistants.

states in the promotion of such education. Such board shall be composed of the director of education, the director of commerce, the director of agriculture, the director of industrial relations, and the director of finance. The director of education shall be chairman and executive officer of the board. Upon the recommendation of the director of education, the board may employ such technical assistants as may be necessary and prescribe their duties and compensation. In all other respects, the state board of vocational education shall exercise the powers and perform the duties vested in the state board of education by sections 367-5, 367-6 and 367-7 of the General Code.

HISTORY. — 109 v. 122.

Director, ex-officio trustee of Kent, Bowling Green and Wilberforce schools.

SECTION 154-50. The director of education shall be ex-officio a member of the board of trustees of Kent state normal school and of the board of trustees of Bowling Green state normal school, and of the combined normal and industrial department at Wilberforce University, with power to speak, but not to vote in such boards of trustees. The membership in each of such boards herein provided for shall be in addition to the membership thereof as otherwise provided by law.

HISTORY. — 109 v. 122.

State library board created; appointment, term, compensation.

SECTION 154-51. A state library board is hereby created in the department of education, to be composed of the director of education, as chairman, and four other members. The members other than the director of education shall be appointed by the governor. The first appointments under this section shall be as follows: One member for a term of two years, one member for a term of four years, one member for a term of six years and one member for a term of eight years. Thereafter one member shall be appointed each two years for a term of eight years. The members other than the director of education shall receive no compensation, but shall be paid their actual and necessary expenses incurred in the performance of their duties.

HISTORY. — 109 v. 123.

State librarian, appointment, powers and duties.

SECTION 154-52. The state library board shall appoint and may remove a state librarian, who shall, under the direction and supervision of the board, be the head of the library service of the state, with power to appoint and remove all assistants and heads of departments in the state library service.

HISTORY. — 109 v. 123.

Rules for government of library.

SECTION 154-53. The state library board shall make such rules for the government of the state library, the use and location of the books and other property therein or the transfer thereof as it deems necessary or advantageous to the library service of the state. It shall organize the library service of the state into departments and determine the number of assistants and other employes therein.

HISTORY. — 109 v. 123.

SECTION 154-54. The state librarian shall be secretary of the state library board. Under the direction and supervision of the state library board and subject to the rules and regulations established by it, the state librarian shall, through such departments as may be created by the board, exercise all powers and perform all duties vested by law in the state board of library commissioners, the librarian heretofore appointed by the state board of library commissioners, the library organizer heretofore appointed by the state board of library commissioners and the legislative reference department and the director thereof.

State librarian, secretary of board; further powers and duties.

HISTORY. — 109 v. 123.

SECTION 154-55. The director of education shall be a member of the board of trustees of the Ohio archæological and historical society, in addition to the members constituting such board under the other laws and regulations pertaining to the membership thereof. No moneys appropriated for the use or support of the Ohio archæological and historical society shall be withdrawn from the state treasury for such use until the board of trustees of said society, as constituted when this section takes effect, shall consent to the provisions hereof and file duplicate certificates of such consent in the offices of the secretary of state and the auditor of state.

Director a member of board of trustees of Ohio archæological and historical society. How moneys for support of society shall be drawn from treasury.

HISTORY. — 109 v. 123.

SECTION 154-56. The director of education shall be a member of the board of trustees of the Ohio state university, with power to speak but not to vote therein. The membership in said board hereby created shall be in addition to those provided for by section seven thousand nine hundred and forty-two of the General Code.

Director a member of board of trustees of Ohio State University.

HISTORY. — 109 v. 121.

SECTION 352. There shall be a superintendent of public instruction, who shall be appointed by the governor. He shall hold his office for a term of four years, and until his successor is appointed and qualified, such term commencing on the second Monday of July. He shall have an office in or near the state house, in which the books and papers pertaining to his office shall be kept.

Superintendent of public instruction; appointment and term.

HISTORY.—R. S. § 354; 70 v. 195, § 102; S. & C. 1362; 81 v. 89; 98 v. 272; 104 v. 225 (226).

Section 4 of Article VI of the Constitution governs the appointment of the Superintendent of Public Instruction, and under the provisions of said section the term of a person appointed by the Governor to fill a vacancy in said office begins at the date of the appointment and qualification of said person, and continues for the full term of four years. Op. Atty. Gen. (1916), p. 292.

SECTION 352-1. No one who is interested financially or otherwise in any book publishing or book selling company, firm or corporation, shall be eligible to appointment as superintendent of public instruction. If any superin-

Who eligible as superintendent.



tendent of public instruction becomes interested financially or otherwise, in any book publishing or book selling company, firm or corporation said superintendent of public instruction shall forthwith be removed from office by the governor.

HISTORY.—104 v. 225 (226).

Bond of superintendent,  
where filed.

SECTION 353. Before entering upon the discharge of the duties of his office, the superintendent of public instruction shall give a bond to the state in the sum of five thousand dollars, with two or more sureties approved by the secretary of state, conditioned for the faithful discharge of the duties of his office. Such bond, with the approval of the secretary of state, and the oath of office indorsed thereon, shall be deposited with secretary of state and kept in his office.

HISTORY.—R. S. § 355; 70 v. 195, § 103; S. & C. 1362; 103 v. 528 (529).

Employment of  
clerks and  
assistants.

SECTION 353-I. The superintendent of public instruction may employ such clerks, stenographers and assistants as will enable him to properly care for the duties of his office. The compensation of such appointees shall be fixed by the superintendent of public instruction, with the approval of the governor.

HISTORY.—104 v. 225 (226).

Duties of  
superintendent.

SECTION 354. The superintendent of public instruction while holding such office shall not perform the duties of teacher or superintendent of a public or private school, or be employed as teacher in a college or hold any other office or position of employment. He may visit and inspect schools and attend educational gatherings either within or without the state, and deliver lectures on topics calculated to subserve the interests of popular education, and his necessary and actual expenses therefor when properly verified shall be paid by the state.

HISTORY.—R. S. §§ 356, 357; 70 v. 195, §§ 104, 105; 90 v. 13; S. & C. 1362; 104 v. 225 (226).

Supervision of  
school funds  
and reports.

SECTION 355. The superintendent of public instruction shall have such supervision of the school funds of the state as is necessary to secure their safety and distribution as provided by law. He may require of auditors and treasurers of counties, boards of education, teachers, clerks and treasurers of such boards, and other local school officers, copies of all reports made by them in pursuance of law. He may also require of such officers any other information he deems proper in relation to the condition and management of schools and school funds.

HISTORY.—R. S. § 358; 70 v. 195, § 106; S. & C. 1362; 104 v. 225 (226).

Collation of  
school laws.

SECTION 356. The superintendent of public instruction shall collate the laws relating to schools and teachers' institutes, and provide an appendix of forms and instructions for their execution. He may revise such collation and ap-

pendix as often as changes therein are in his opinion necessary.

HISTORY.—R. S. § 361; 70 v. 195, § 108; S. & C. 1363; 104 v. 225 (226); 106 v. 308 (509).

Instructions by the commissioner inserted in a compilation of the school laws prepared and printed under this section, while not entitled to the weight of a judicial decision, are entitled to consideration in interpreting statutes to which such instructions relate. State, ex rel., v. Treasurer of German Township, 2 O. C. C. 366.

SECTION 357. The superintendent of public instruction shall prescribe suitable forms and regulations for the reports and other proceedings required by the school laws, with such instructions for the organization and government of schools as he deems necessary, and transmit them to the local school officers, who shall be governed thereby in the performance of their duties.

Forms and regulations for reports and proceedings.

HISTORY.—R. S. § 359; 70 v. 195, § 107; S. & C. 1363; 104 v. 225 (227).

SECTION 358. The superintendent of public instruction shall issue each year a manual for arbor day exercises. The manual shall contain matters relating to forestry and birds, including a copy of such laws relating to the protection of song and insectivorous birds as he deems proper. He shall transmit copies of the manual to the superintendent of city, village, and rural schools and to the clerks of boards of education, who shall cause them to be distributed among the teachers of the schools under their charge. On arbor day, and other days when convenient, the teachers shall cause such laws to be read to the scholars of their respective schools and shall encourage them to aid in the protection of such birds.

Publication and distribution of Arbor Day manual.

HISTORY.—R. S. § 4091; 95 v. 378, § 6960b; 97 v. 470, § 14; 104 v. 225 (227).

SECTION 359. Each year the superintendent of public instruction shall require a report of the president, manager or principal of each seminary, academy or private school. The report shall be made upon blanks furnished by the superintendent and contain a statement of such facts as he prescribes. The president, manager or principal shall fill up and return the blanks within a time fixed by the superintendent of public instruction.

Reports from private schools.

HISTORY.—R. S. § 363; 73 v. 225, § 1; 104 v. 225 (227).

SECTION 360. The superintendent of public instruction shall make an annual report to the governor, which shall contain a statement of the amount and condition of the funds and property appropriated for purposes of education; the number of common schools in the state, the number of scholars attending such schools, their sex and the branches taught; the number of private or select schools in the state so far as can be obtained, the number of scholars attending such schools, their sex and the branches taught; the number of teachers' institutes, the number of teachers attending them, the number of instructors and lec-

Annual report of superintendent to governor.

turers employed therein and the amount paid to each; the estimates and accounts of expenditures of the public school funds, plans for the management and improvement of common schools, and such other information relative to the educational interests of the state as the superintendent deems important.

HISTORY.—R. S. §§ 361, 362; 85 v. 192; 70 v. 195, §§ 109, 110; S. & C. 1363; 104 v. 225 (227).

Complaint of  
fraudulent use  
of school  
funds.

SECTION 361. When three or more resident taxpayers of a school district have reason to believe that any portion of the school funds of the district has been unlawfully expended or misapplied by the officers thereof, or that fraudulent entries have been made by an officer in the books, accounts, vouchers, or settlement sheets of the district, or that an officer has not made settlement of his account as required by law, they may make complaint thereof in writing, verify it by the affidavits of at least three such taxpayers, with the certificate of the auditor of the county that they are taxpayers attached, and file such complaint with the superintendent of public instruction.

HISTORY.—R. S. § 364; 72 v. 82, § 1; 94 v. 312; 104 v. 225 (227).

Examiner to  
investigate  
condition of  
funds.

SECTION 362. Upon the filing of complaint, or when for other cause he deems it necessary, the superintendent of public instruction shall request the auditor of state to detail an examiner of his department to investigate the condition of the school funds of a district. The examiner shall be a trustworthy and competent accountant and shall have authority to summon witnesses before him forthwith upon written notice and examine them under oath administered by him. He shall be sworn by a person authorized by law to administer oaths, and shall forthwith visit the school district, take possession of the books, papers, vouchers and accounts thereof and begin such investigation.

HISTORY.—R. S. §§ 364, 365; 72 v. 82, §§ 1, 2; 94 v. 312, 313; 104 v. 225 (228).

Duty of cer-  
tain officers in  
case of exam-  
ination.

SECTION 363. On application of the examiner, the officers of the school district shall immediately place in his possession the books, accounts, contracts, vouchers and other papers relating to the receipts and expenditures of the school funds. The auditor and treasurer of the county shall afford the examiner free access to the records, books, papers, vouchers and accounts of their respective offices relating to the subject of the investigation.

HISTORY.—R. S. § 365; 94 v. 313; 72 v. 82, § 2.

Report of ex-  
aminer.

SECTION 364. After completing an investigation, the examiner shall make a report in writing in duplicate showing the condition of the books, vouchers and accounts of the district, the amount of school funds received for all purposes and from what sources, the amount thereof expended and for what purposes and the amount in the treasury. The examiner shall file one copy of the report with the president of the county board of education of the



county in which the district is located, and transmit the other to the superintendent of public instruction.

HISTORY.—R. S. § 365; 72 v. 82, § 2; 94 v. 313; 104 v. 225 (228).

SECTION 365. With the written consent of the prosecuting attorney or a judge of the court of common pleas of the county in which the school district is located, the examiner may require the services of the official court stenographer of the county to aid him in making such examination; but the stenographer shall receive no compensation for such service in addition to the compensation provided for him by law.

Stenographer  
for examiner.

HISTORY.—R. S. § 364; 94 v. 312; 72 v. 82, § 1.

SECTION 366. The examiner shall receive five dollars for each day necessarily engaged in the performance of his duties and five cents for each mile of necessary travel not exceeding the distance from the seat of government to the school district. The compensation and mileage of the examiner shall be paid from the county treasury upon the warrant of the county auditor. If the complaint or other cause be sustained, the amount so paid shall be assessed by the county auditor upon the taxable property of the school district and collected as other taxes.

Compensation  
and mileage of  
examiner.

HISTORY.—R. S. § 365; 94 v. 313; 72 v. 82, § 2.

SECTION 367. A judge of the court of common pleas of the proper county shall examine the report of the examiner filed with the clerk, and, if it appear therefrom that any part of the school funds has been unlawfully used or misapplied, or that there has been fraud in the entries, accounts, vouchers, contracts or settlements, or that the settlements have not been made as required by law; or, if it appear therefrom that there has been defalcation or embezzlement by an officer of such district, he shall give the report specially in charge to the grand jury at the term of court following the filing of the report. The prosecuting attorney of the county shall forthwith prosecute such proceedings, civil or criminal, or both, as are authorized by law, against the delinquent officer or officers.

Duty of judge  
and prosecuting  
attorney.

HISTORY.—R. S. § 366; 72 v. 82, § 3.

An action cannot be maintained under the provisions of this section to enjoin a board of education from applying money arising from taxes levied to build a school building, to the purpose of repaying money borrowed by such board in anticipation of such taxes. State, ex rel., v. Board of Education, 11 O. C. C. 41.

SECTION 367-1. The provisions of an act of congress entitled, "An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational

Provisions of  
congress for  
vocational  
education  
accepted.

subjects; and to appropriate money and regulate its expenditure," are hereby accepted by the state of Ohio.

HISTORY.—107 v. 579, § 1.

The moneys appropriated by the general assembly of Ohio for co-operation with the federal government in vocational education may not be lawfully expended for the salary of a director of vocational education, including industrial training and home economics.

The actual and necessary expenses of the members of the state board of education and the expenses of the state board itself, other than clerical services, are a proper charge against said appropriations. Op. Atty. Gen. (1917), p. 1769.

Held, further on a consideration of act of the legislature, 107 Ohio Laws, page 579, and the act of Congress referred to therein, that no authority existed in the state board of education to employ a director of agricultural education; but that the state superintendent of public instruction has supervisory power respecting the teaching of agriculture. Op. Atty. Gen. (1917), p. 1769.

In matching the expenditure of federal money allotted to the state under the provisions of the Smith-Hughes Law, the federal money expended in the state at large should be matched annually by combining the sums expended during the year by the local districts and the state board of education for vocational education.

Where the general assembly has appropriated a lump sum for the purpose of co-operative work with the federal government in vocational education in accordance with the provisions of the Smith-Hughes Law, such appropriation is not bound to be wholly spent for the purposes for which the federal government will assume one-half of the expense.

Under Section 367-6, General Code, the state board of education should recommend to each session of the general assembly the amount of money which will need to be appropriated by the state, which amount added to the local expenditure in districts for vocational education, would equal the federal allotment, and such state board of education should recommend to the general assembly additional appropriation items for the proper administration and carrying on of vocational education in Ohio. Op. Atty. Gen. (1920), p. 328.

A board of education can conduct its vocational classes outside the limits of the school district, and can use its educational funds in the conduct of such classes.

Schools of each district, including vocational educational classes, shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district, including children of proper age who are inmates of a county or district, or of any public or private, children's home or orphan asylum located in such district; and other persons than those mentioned in Section 7681, General Code, may be admitted to the schools of the district, including its vocational classes, upon such terms or upon the payment of such tuition as the board of education of the district may prescribe. Op. Atty. Gen. (1920), p. 1031.

A city board of education may establish and maintain vocational schools to which adults may be admitted, and may erect and equip suitable buildings, or set apart and use buildings under the control of the board of education for such purposes in the same manner and within the same limitations as it establishes and maintains buildings for other school purposes. However, said schools should not be established for the exclusive use of adult pupils, but should be established for all who are eligible to attend. Op. Atty. Gen. (1920), p. 539.

SECTION 367-2. The benefits of all funds appropriated under the provisions of said act are hereby accepted as to:

Subjects for which funds are accepted.

(a) Appropriations for the salaries of teachers, supervisors and directors of agricultural subjects.

(b) Appropriations for salaries of teachers of trade, home economics and industrial subjects.

(c) Appropriations for the preparation of teachers, supervisors and directors of agricultural subjects and teachers of trade, and industrial, and home economics subjects.

HISTORY.—107 v. 579, § 2; 108 v. Pt. I 356.

SECTION 367-5. The state board of education shall have all necessary authority to co-operate with the federal board for vocational education in the administration of said act of congress and of any legislation pursuant thereto enacted by the state of Ohio, and in the administration of the funds provided by the federal government and the state of Ohio under the provisions of this act [G. C. §§ 367-1 to 367-7], for the promotion of vocational education in agriculture, commercial, industrial, trade, and home economics subjects. The board shall have authority to appoint such directors, supervisors and other assistants as may be necessary to carry out the provisions of this act [G. C. §§ 367-1 to 367-7], and fix their compensation; such appointments to be made upon the nomination of the secretary of the board. The salaries and traveling expenses of such directors, supervisors and assistants, and such other expenses as may be necessary to carry out the provisions of this act [G. C. §§ 367-1 to 367-7], shall be paid upon the approval of the board. They shall have full authority to formulate plans for the promotion of vocational education in such subjects as an essential and integral part of the public school system of education in Ohio; and to provide for the preparation of teachers of such subjects, and to expend federal and state funds appropriated under the provisions of this act for any purposes approved by the federal board of vocational education. They shall have authority to make studies and investigations relating to prevocational and vocational education in such subjects; to promote and aid in the establishment by local communities of schools, departments and classes, giving training in such subjects; to co-operate with local communities in the maintenance of such schools, departments and classes; to establish standards for the teachers, supervisors and directors of such subjects; and to co-operate in the maintenance of schools, departments, or classes supported and controlled by the public for the preparation of teachers, supervisors and directors of such subjects.

Co-operation of state board with federal board.

HISTORY.—107 v. 579 (580), § 5; 108 v. Pt. I 356.

SECTION 367-6. Any school, department, or class giving instruction in agricultural, commercial, industrial, trade and home economics subjects approved by the state board of education and any school or college so approved, training teachers of such subjects, which receives the benefit of fed-

Approved schools shall receive state money equal in amount to federal money.



eral moneys as herein provided, shall be entitled also to receive for the salaries of teachers of said subjects an allotment of state money equal in amount to the amount of federal money which it receives, as herein provided, for the same year. The state board of education shall recommend to each session of the general assembly the amount of money which will need to be appropriated by the state for such allotments for such other expenditures as may be necessary for the administration of this act [G. C. §§ 367-1 to 367-7], during the succeeding biennial period. The state board shall also recommend such additional legislation as may be necessary for the promotion and administration of vocational education in the state.

HISTORY.—107 v. 579 (580), § 6; 108 v. Pt. I 356 (357).

Under Section 367-6, General Code, the state board of education should recommend to each session of the general assembly the amount of money which will need to be appropriated by the state, which amount added to the local expenditure of the districts for vocational education, would equal the federal allotment; and such state board of education should recommend to the general assembly additional appropriation items for the proper administration and carrying on of vocational education in Ohio. Op. Atty. Gen. (1920), p. 328.

State treasurer  
custodian of  
funds.

SECTION 367-7. The state treasurer is hereby designated as the custodian of all funds received from the United States treasury for vocational education under the terms of this act [G. C. §§ 367-1 to 367-7]. All money so received or appropriated by the state of Ohio for the purposes contemplated in the act of congress and in this act [G. C. §§ 367-1 to 367-7], or in acts supplementary thereto, shall be disbursed in accordance with law, upon the order of the state board of education.

HISTORY.—107 v. 579 (580), § 7.

Ohio acceptance of provisions of Federal law for rehabilitation.

SECTION 367-8. The state of Ohio does hereby, through its legislative authority, accept the provisions and benefits of the act of congress, entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, and will observe and comply with all requirements of such act.

HISTORY.—109 v. 310.

Custodian of funds.

SECTION 367-9. The state treasurer is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the congress of the United States for the vocational rehabilitation of persons disabled in industry or otherwise, and is authorized to receive and provide for the proper custody of the same and to make disbursements therefrom upon the order of the state board herein designated.

HISTORY.—109 v. 310.

SECTION 367-10. The board heretofore created as the state board of education to cooperate with the federal board for vocational education in the administration of the provisions of the vocational education act, approved February 23, 1917, is hereby designated as the state board for the purpose of cooperating with the said federal board in carrying out the provisions and purposes of said federal act providing for the vocational rehabilitation of persons disabled in industry or otherwise and is empowered and directed to cooperate with said federal board in the administration of said act of congress; to prescribe and provide such courses of vocational training as may be necessary for the vocational rehabilitation of persons disabled in industry or otherwise and provide for the supervision of such training; to appoint such assistants as may be necessary to administer this act and said act of congress in this state; to fix the compensation of such assistants and to direct the disbursement and administer the use of all funds provided by the federal government of this state for the vocational rehabilitation of such persons.

Co-operation  
of state board  
of education  
with Federal  
board.

HISTORY.—109 v. 310.

SECTION 367-11. It shall be the duty of the state board of education and the industrial commission of Ohio to formulate a plan of cooperation in accordance with the provisions of this act and said act of congress, such plan to become effective when approved by the governor of the state.

Plan of co-  
operation.

HISTORY.—109 v. 310.

SECTION 367-12. The state board designated to cooperate as aforesaid in the administration of the federal act, is hereby authorized and empowered to receive such gifts and donations, either from public or private sources, as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise as in the judgment of the state board are proper and consistent with the provisions of this act. All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by said board to defray expenses of vocational rehabilitation in special cases, including the payment of necessary expenses of persons undergoing training. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to the governor of the state by the state board.

Authority to  
receive gifts,  
where de-  
posited; re-  
ports.

HISTORY.—109 v. 310.

SECTION 1270. The state medical board shall appoint an entrance examiner who shall not be directly or indirectly connected with a medical college and who shall determine the sufficiency of the preliminary education of applicants

Requisites for  
admission to  
examination.  
(Medicine.)

for admission to the examination. The following preliminary educational credentials shall be sufficient:

A diploma from a reputable college granting the degree of A. B., B. S., or equivalent degree.

A diploma from a legally constituted normal school, high school or seminary, issued after four years of study:

A teacher's permanent or life certificate:

A student's certificate of examination for admission to the freshman class of a reputable literary or scientific college.

In the absence of the foregoing qualifications, the entrance examiner may examine the applicant in such branches as are required for graduation from a first class high school of this state, and to pass such examination shall be sufficient qualification. If the entrance examiner finds that the preliminary education of the applicant is sufficient, he shall, upon payment to the treasurer of the state medical board of a fee of three dollars, issue a certificate thereof, which shall be attested by the secretary of the state medical board.

The applicant must also produce a certificate issued by the entrance examiner and a diploma from a legally chartered medical institution in the United States, in good standing, as defined by the board, at the time the diploma was issued, and which institution, subsequent to May 1st, 1913, requires for admission for the degree of M. D., to such institution, a preliminary education equal to that required for graduation from a first grade high school in this state, or a diploma or license approved by the board which conferred the full right to practice all branches of medicine or surgery in a foreign country.

HISTORY. — 99 v. 497, § 27; 103 v. 438. For an analogous statute, see R. S. § 4403c.

For criminal liability incurred in practicing medicine without a certificate, see G. C. § 12694.

Board shall determine standing of school giving instruction, (Medicine.)

SECTION 1274-5. The state medical board shall determine the standing of the schools, colleges, institutions or individuals giving instruction in such limited branches. If there shall at any time be such schools, colleges, institutions, or individuals giving instruction in such limited branches, the applicant for such certificate shall, as a condition of admission to the examination, produce a diploma or certificate from such a school, college, institution, or individual in good standing as determined by the board, showing the completion of the required courses of instruction.

Preliminary education of applicant.

The entrance examiner of the state medical board shall determine the sufficiency of the preliminary education of applicants for such limited certificate as is provided in section 1270 of the General Code; provided, however, that the state medical board may adopt rules defining and establishing for any limited branch of medicine or surgery such preliminary educational requirements, less exacting than those prescribed by said section, as the nature of the case may require.

HISTORY. — 106 v. 202 (204).



SECTION 1283. Each person who desires to practice midwifery in this state, and is not authorized by law so to do, shall appear before the state medical board and submit to such examination as the board requires.

Examination to practice midwifery; filing application.

In order to be admitted to the examination the applicant shall file with the secretary of the state medical board a written application, under oath, on a form prescribed by the board, and furnish satisfactory proof that she is more than twenty-one years of age and of good moral character.

At the time of her application, the applicant shall file with the secretary of the state medical board such evidence of preliminary education as is required by law of applicants for examination to practice medicine or surgery and present a diploma from a legally chartered school of midwifery, in good standing, as defined by the board, at the time the diploma was issued, or a diploma or license approved by the board which conferred the full right to practice midwifery in a foreign country, with her affidavit that she is the person named therein and is the lawful possessor thereof, stating her age, residence, the school or schools at which she obtained her education in midwifery, the time spent in each, the time spent in the study of midwifery, and such other facts as the state medical board requires. If engaged in the practice of midwifery, the affidavit shall state the period during which and the place where she has been so engaged.

Evidence of preliminary education required; diploma.

HISTORY. — 99 v. 500, § 40; 103 v. 538. For an analogous statute, see R. S. § 4403c.

SECTION 1289. Before he shall be admitted to an examination before the state medical board a person who desires to practice osteopathy shall pay a fee of twenty-five dollars to its treasurer and file with its secretary such evidence of preliminary education as is required by law of applicants for examination to practice medicine or surgery, together with a certificate from an osteopathic examining committee as hereafter provided, showing that the applicant holds a diploma or a physician's osteopathic certificate from a reputable college of osteopathy as determined by such committee, and that he has passed an examination in a manner satisfactory to the committee in the subjects of pathology, physiological chemistry, gynecology, minor surgery, osteopathic diagnosis and the principles and practice of osteopathy.

Requirements for admission to examination in osteopathy.

HISTORY. — 99 v. 501, § 46; 107 v. 152. For analogous statute, see R. S. 4403f.

SECTION 1295-5. On and after January 1, 1916, no person shall practice nursing as a registered nurse in this state without first complying with the requirements of this act [G. C. §§ 1295-1 et seq.]. All graduates in nursing shall either personally or by letter or proxy, present their diplomas to the nurses' examining committee for verification. Accompanying such diploma the applicant shall file an affidavit, duly attested, stating that the applicant is the person named in the diploma and is the lawful possessor

Qualifications and procedure required to enable graduate applicant to certificate. (Nursing.)

Record of certificate.

of the same. The applicant shall state date of birth and the actual time spent in the study of nursing. If the committee shall find the diploma to be genuine and from a nurses' training school in good standing, as defined by the state medical board, and connected with a hospital or sanatorium, and the person named therein to be the person holding and presenting the same, and that said person has paid the fee as hereinafter provided for the examination of applicants, the committee shall issue a certificate to that effect signed by its secretary and chief examiner; such certificate, when left with a probate judge for record as hereinafter required, shall be conclusive evidence that its owner is entitled to practice nursing as a registered nurse in this state.

Examination of applicants other than graduates.

All other persons desiring to engage in such practice in this state, shall apply to the nurses' examining committee for a certificate, and submit to the examination hereinafter provided, except that all students who were on May 1, 1915, matriculated in a training school for nurses located in the state of Ohio, recognized by the state medical board of Ohio, and who shall have graduated subsequent to May 1, 1915, and who shall file their diplomas for registration prior to June 1, 1918, shall receive certificate as heretofore provided. The applicant shall file with secretary a written application, under oath, on a form prescribed by the state medical board, and provide proof that said applicant is more than twenty-one years of age and of good moral character. The applicant shall file documentary evidence that before matriculating in a training school for nurses, said applicant received an education equivalent to that required for completion of the first year of high school course of the first grade in this state, of four units of high school work, as defined in the school laws of Ohio, and evaluated by the entrance examiner of the state medical board in the same manner as provided in section 1270 of the General Code of Ohio, and a diploma of graduation from a training school in good standing, as defined by the state medical board and connected with a hospital or sanatorium. At the time of application the applicant shall present such diploma with the affidavit that said applicant is the person named therein and is the lawful possessor thereof, stating date of birth, residence, the training school or schools at which said applicant obtained education and training in nursing, the time spent in each, the time spent in the study and training of nursing, and such other facts as the state medical board required. If engaged in the practice of nursing, the affidavit shall state the period during which and the place where said nurse has been so engaged.

HISTORY. — 106 v. 191 (192), § 5; 108 v. Pt. 1 48.

For criminal liability for violating this section, see G. C. §§ 12715-1 and 12715-2.

Examination required by practitioners. (Optometry.)

SECTION 1295-28. Every person desiring to commence the practice of optometry, or if now in practice, to continue the practice thereof after January 1, 1920, except as herein otherwise provided, shall take the examination

provided in this act and fulfill the other requirements hereof as herein provided. Any person who has been engaged in the practice of optometry in this state for two full years immediately prior to the passage of this act or for one year in this and for the year preceding it in another state, and is of good character shall be entitled to take a limited examination covering the following only:

- (a) The limitations of the sphere of optometry.
- (b) The necessary scientific instruments used.
- (c) The form and power of lenses used.
- (d) A correct method of measuring presbyopia, hypermetropia, myopia and astigmatism.

Standard examination; who may take.

(e). The writing of formulae or prescriptions for the adoption of lenses in aid of vision.

Any person serving in the military or naval forces of the United States who was engaged in the practice of optometry previous to his entering such service shall be deemed as being engaged in the practice of optometry during the time he is in such service.

Any person over the age of 21 years, of good moral character, who has had a preliminary education equivalent to two years of the course in a first grade high school, which shall be ascertained by examination or by acceptable certificate as to credentials for work done in such approved institution, and has graduated from a school or college of optometry in good standing, as determined by the board, which maintains a course in optometry of not less than two years shall be entitled to take a standard examination. Said standard examination shall consist of tests in practical, theoretical and physiological optics, in theoretical and practical optometry and in the anatomy and physiology of the eye and in pathology as applied to optometry. Provided that any person not less than twenty-one years of age who is actually engaged in the practice of optometry at the time of the passage of this act [G. C. §§ 1295-21 to 1295-35] shall be entitled to take the standard examination merely upon proof to the board that he is of good moral character, and is not addicted to the intemperate use of alcohol or narcotic drugs.

HISTORY.—108 v. Pt. I 73 (75), § 8.

SECTION 1303-1. The state board of pharmacy shall appoint an entrance examiner who shall not be directly or indirectly connected with a school of pharmacy and who shall have received the degree of B. A. or B. Sc., and who shall determine the sufficiency of the preliminary education of the applicants for admission to a school of pharmacy in good standing as defined in section 1303-2 of the General Code, and to whom all applicants shall submit credentials.

Entrance examiner; qualifications; duties. (Pharmacy.)

The following preliminary educational credentials shall be sufficient: The equivalent of eight units as given in a high school of the state of Ohio and on and after January 1, 1920, a diploma from a legally constituted high school, normal school or academy, issued after at least four years

Preliminary education of applicants.



Examination  
fee.

of study; provided, however, that in the absence of the foregoing qualifications, the entrance examiner shall examine the applicant in such branches as are required to obtain them. Applicants desiring to enter a school of pharmacy in good standing as defined in section 1303-2 of the General Code must submit certificates to the entrance examiner from their school authorities describing in full the work completed: Provided, that in the absence of all or any part of the foregoing qualifications, the applicant must present himself before the entrance examiner for the scheduled examinations: Provided further, that the applicants upon presentation of certificates from their school authorities or in case of examination, must pay in advance to the board of pharmacy a fee of three dollars. If the entrance examiner finds that the preliminary education of the applicant is sufficient, he shall issue to the applicant a certificate therefor which shall be attested by the secretary of the state board of pharmacy. The compensation of the entrance examiner shall be fixed by the state board of pharmacy.

HISTORY. — 706 v. 329 (330); 168 v. Pt. I 254.

Under section 1303-1 G. C. a diploma from a legally constituted high school, normal school or academy, issued after four years of study, is declared sufficient, and the holder thereof is not required to take an entrance examination to enter the state school of pharmacy.

The high school thus referred to means a first grade high school, as defined in section 7658 G. C., which requires sixteen courses for graduation. No specific provisions of law lay down similar requirements for graduation from a normal school or an academy; so that as to normal schools and academies, rules covering admission to the school of pharmacy without examination must be made.

Under section 1303-1 G. C., the state board of pharmacy may prescribe rules governing the sufficiency of requirements for entrance without examination to the school of pharmacy, but such requirements shall in no case exceed sixteen courses, pursued during four years of study. Nothing in said section provides that the board shall not accept fifteen courses, pursued during four years of study, as sufficient for entrance without examination. Op. Atty. Gen., No. 1904, March 9, 1921.<sup>1</sup>

Certificate of  
general educa-  
tion shall be  
filed with ap-  
plication.  
(Dentistry.)

SECTION 1321-1. The applicant shall also present with his application a certificate of the state superintendent of public instruction, that he is possessed of a general education equal to that required for graduation from a first grade high school in this state. Said superintendent of public instruction shall issue a certificate without examining the applicant, provided said applicant presents to him one of the following credentials: A diploma from an approved college granting the degree of A. B., B. S. or equivalent degree; a certificate showing graduation from a high school of the first grade, or from a normal or a preparatory school, legally constituted, after four years of study; a teacher's permanent or life high school certificate; a certificate of admittance by examination to the freshman class of an approved college granting the degree of A. B., B. S. or

equivalent degree. In the absence of the foregoing credentials and before issuing such certificate the applicant shall be examined by said superintendent of public instruction, in such branches as are required from a first grade high school and to pass such examination shall be sufficient qualification to entitle such applicant to a certificate; provided, however, that the superintendent of public instruction may designate any county superintendent of schools to hold such examinations at such times and places as may be necessary or convenient. The fee for such examination shall be three dollars and the fee for certificate shall be one dollar, both payable to said superintendent of public instruction and by him paid into the state treasury to the credit of the general revenue fund. Granting of certificates by examination by said superintendent of public instruction, and acceptance by said superintendent of certificates of admittance by examinations to the freshman class of approved colleges granting the degree of A. B., B. S. or equivalent degree, shall cease after January first, 1919. This shall not apply to students already enrolled in accredited dental colleges.

Examination  
fee.

HISTORY. — 106 v. 297 (298).

SECTION 1342. Every person desiring to engage in the practice of embalming or the preparation of the dead for burial, cremation or transportation, in the state of Ohio, shall make a written application to the state board of embalming examiners for registration, giving such information as the said board may, by regulation, require for such registration. Each application must be accompanied by a fee of one dollar with the certificates of three reputable citizens, (one of whom shall be a licensed embalmer) that the proposed applicant is of good moral character and stating his age and general education which shall be such as to entitle him or her to admittance to high school. If the said board shall find the facts set forth in the application to be true, the said board shall issue to said applicant a certificate of registration. Before a registered applicant can apply for and take an examination in the practice of embalming or preparing for burial, cremation or transportation, the body of any dead person in the state of Ohio, said applicant shall have completed to the satisfaction and approval of the said board, a course consisting of at least twenty-six weeks of studies in the science of embalming, disinfection and sanitation in a regular school of embalming, recognized by said board or shall have had at least two years of practical experience under a licensed embalmer in this state, during which time he or she shall have embalmed, (arterially) at least twenty-five dead adult human bodies. All applications for a license to practice embalming and the preparation of the dead for burial, cremation or transportation in this state, must be made to the state board of embalming examiners in writing and contain the name, age, residence and the person or persons with whom employed, the name of the school attended together with a certificate from two

Application for  
registration;  
certificates and  
fee.  
(Embalming.)

When regis-  
tered applicant  
may take ex-  
amination.

Contents of  
application;  
examination  
fee.

reputable citizens that the applicant is of legal age and of good moral character, also a certificate under oath when required by the said board from the president or dean of the embalming school or college he or she has attended, that the applicant has complied with the requirements of said school or college or a certificate under oath, when required by said board, from the licensed embalmer under whom he or she has worked as an apprentice, that he or she has complied with the requirements of apprenticeship as set forth in this section. Each application must be accompanied by a fee of ten dollars and the certificate of registration. If after the state board of embalming examiners are satisfied that the applicant has qualified as set forth in this section, the said board shall cause the said applicant to appear before them and be examined in the subjects as set forth in the preceding section and he must pass said examination with an average grade of not less than seventy-five per cent.

HISTORY.—99 v. 509, § 90; 107 v. 654 (656). For an analogous statute, see R. S. § 4412-16.

Certified public  
accountant.

SECTION 1373. A citizen of the United States or a person who has duly declared his intention to become such citizen, not less than twenty-one years of age, of good moral character, a graduate of a high-school or having received an equivalent education, with at least three years' experience in the practice of accounting and who has received from the state board of accountancy as herein provided a certificate of his qualifications to practice as a public expert accountant shall be styled and known as a certified public accountant. No other person shall assume such title or use the abbreviation, "C. P. A.," or other words or letters to indicate that he is a certified public accountant.

HISTORY.—99 v. 332, § 1.

How attorneys  
shall be ad-  
mitted.

SECTION 1700. When a person applies to the supreme court for admission to the bar, he shall be examined as to his fitness and qualifications, by the court or two of the judges. If on examination the court or judges are satisfied that he is of good moral character, has a competent knowledge of the law, and sufficient general learning, an oath of office shall be administered to him, and an order made on the journal that he be admitted to practice as an attorney and counselor at law in all courts of record of this state. But the supreme court may appoint a commission composed of not less than three persons learned in the law to assist in such examination, and to serve for one or more year.

HISTORY.—R. S. § 559; 29 v. 411, § 2; S. & C. 92.

Cited upon the proposition that in state examiners authority to fix the qualifications for admission may be delegated to examiners: *Akron Board of Education v. Sawyer*, 7 O. N. P. (N. S.) 401, 19 O. D. (N. P.) 1; *Theobald v. State*, 10 O. C. C. (N. S.) 536, 20 O. C. D. 335.

The supreme court, on the question of the admission of persons to practice law, acts in judicial capacity, and a communication



addressed to the court pertinent to the character of an applicant for admission to the bar, and received and acted upon by the court, is absolutely privileged so far as an action for libel or slander is concerned: *Wilson v. Whitacre*, 4 O. C. C. 15, 2 O. C. D. 392.

SECTION 1701. No person shall be admitted to an examination unless he is twenty-one years of age, has resided in the state for the year next preceding, and is a citizen of the United States or has declared his intention of becoming a citizen thereof, nor until he has produced from an attorney at law a certificate that the applicant is of good moral character, that he believes him to have sufficient legal knowledge and ability to discharge the duties of attorney and counselor at law, and that he has regularly and attentively studied law during the period of three years previous to such application, either under the tuition of a practicing attorney or in regular attendance at a law school, or for a part of such period under such tuition and for the rest of it in attendance at school.

Requirements for examination to practice law.

HISTORY.—R. S. § 560; 91 v. 133; 55 v. 17, § 3; S. & C. 92.

SECTION 1701-1. Any person who is or was a member of the army, navy or marine corps of the United States of America in the present world war and is in good standing or has been honorably discharged from the service and who at the time he entered the service was engaged in the study of law shall be entitled, upon the presentation of proper credentials to the supreme court of Ohio, to a credit for the time that he was in the service, not exceeding one year, however, on the three years' period of study that is required as a condition precedent to the taking of the bar examination.

Credits to certain members of army, navy and marine corps.

HISTORY.—108 v. Pt. I 67, § 1.

SECTION 1851-1. All teachers who are employed or who shall hereafter be employed in any benevolent, correctional or penal institution of the state, except the State School for the Deaf and the State Institution for Feeble-minded, shall on and after September 1st, 1923, possess such teachers' certificates or have such qualifications and approval as the superintendent of public instruction after conference with the officers in charge of the several institutions may prescribe for the various particular types of service or service in the particular institutions.

Qualifications of teachers in state institutions.

HISTORY.—109 v. 140.

SECTION 1851-2. The courses of study for the instruction and training of all persons in the benevolent, correctional or penal institutions shall be subject to the approval of the superintendent of public instruction.

Course of study in state institutions.

HISTORY.—109 v. 140.

SECTION 1851-3. The superintendent of public instruction shall inspect personally or by deputy at least annually all institutions under the control of the board of administration which employ teachers, and shall make a report on

Inspection of institutions by superintendent of public instruction.

the teaching, discipline and school equipment in these institutions to the proper managing board and to the governor.

HISTORY.—109 v. 140.

Salaries of appointive State officers and employees.

SECTION 2250. The annual salaries of the appointive state officers and employees herein enumerated shall be as follows:

\* \* \*

Department of Education:

Superintendent of public instruction as director of education, six thousand five hundred dollars.

Chief of division of examination and licensing, two thousand five hundred dollars.

Chief of division of film censorship, three thousand six hundred dollars.

\* \* \*

The assistant director of a department designated to fill one of the offices within such department for which a salary is fixed by this section shall receive the salary fixed herein for the position so held by him.

HISTORY.—109 v. 128.

Official reports shall be made in triplicate; where filed.

SECTION 2264-1. Each elective state officer, and the adjutant\*general, board of pardons, superintendent of public instruction, \* \* \* the trustees of the Ohio state university, and every private or quasi-public institution, association, board or corporation receiving state money for its use and purpose, shall make annually, at the end of each fiscal year, in triplicate, a report of the transactions and proceedings of his office or department for such fiscal year excepting however receipts and disbursements unless otherwise specifically required by law. Such report shall contain a summary of the official acts of such officer, board or commission, institution, association or corporation, and such suggestions and recommendations as may be proper. On the first day of August of each year, one of said reports shall be filed with the governor of the state, one with the secretary of state, and one shall be kept on file in the office of such officer, board, commission, institution, association or corporation.

HISTORY.—106 v. 508. For analogous section, see P. & A. Code § 2265, which was R. S. §§ 58, 62; 88 v. 498; 73 v. 160, § 3; S. & C. 825; 72 v. 179, § 7; S. & C. 826; 101 v. 347; G. C. § 499-5, which was 103 v. 804 (808), § 18; and P. & A. Code § 614, which was R. S. § 264; 74 v. 33, § 12; S. & S. 80; and P. & A. Code § 614-80, which was 102 v. 549, § 84.

Definition of terms.

SECTION 2264-2. Wherever in the statutes of this state annual reports are required to be made to the governor, or annual reports to the governor are referred to, the words "to the governor" shall be held to mean annual reports in triplicate as provided in section 2264-1 and the special information required by any such statutes to be included in such annual report to the governor shall be included in such triplicate reports.

HISTORY.—106 v. 508 (509).

SECTION 2288-2. It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the director of finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations.

Certification of  
balance re-  
quired before  
contract.

HISTORY.—107 v. 457; 109 v. 130.

Prior to the making by a state officer, board or commission of any contract involving the expenditure of money, the director of finance must, under the provisions of section 2288-2 G. C. (109 O. L. 130) first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations; but there is no requirement that he certify as to any balance in the fund in the state treasury upon which the appropriation is to operate. Said section merely requires that all contracts, agreements or obligations involving the expenditure of money, be brought within the amount set apart by the legislature for a particular purpose, and such setting apart may antedate the appearance of funds in the state treasury. Op. Atty. Gen., No. 2317, August 12, 1921.

See Opinions of Attorney General, No. 2317 (1921), cited under Sec. 154-40.



## CHAPTER 3

### ORGANIZATION OF ORIGINAL SURVEYED TOWNSHIPS

#### SECTION

- 3181. Duties of township officers relative to maps, notes, etc., of school and ministerial lands.
- 3182. Duty of state supervisor.
- 3183. Division of lands.
- 3184. Reservation of timber, oil, gas, coal, etc.
- 3185. When land may be withdrawn from sale or lease.
- 3186. Appraisement when land desired by agricultural department; sale or lease.
- 3187. Lease by Ohio board of administration, for coal.

#### SECTION

- 3188. Operation of mines; coal furnished state at cost.
- 3189. Supervisor of school and ministerial lands.
- 3190. Enforcement of laws.
- 3191. Commission to investigate and settle claims.
- 3192. Local charge and management.
- 3193. Officer having interest in lease not eligible as managing officer; appointment.
- 3193-1. Fees of trustees and clerk.

Duties of township officers relative to maps, notes, etc., of school and ministerial lands.

SECTION 3181. It shall be the duty of the treasurer, clerk and trustees of all original surveyed townships, and all other officers, excepting county recorders, charged with or having the possession or custody of records or papers pertaining to the lands appropriated by congress for the support of schools, or the purposes of religion, and of all officers charged by law with the administration of such lands, to transfer and deliver to the state supervisor of school and ministerial lands, all field notes, maps, surveys, books, records, deeds or leases and copies thereof, school land sales records, documents and papers of every description, in their possession, relating to any school or ministerial lands in the state, whether such lands shall have been sold or still remain unsold. The state supervisor shall be the custodian thereof.

HISTORY.—107 v. 357, § 1.

The proposition from the Act of 1802 "which finally became matter of compact between the general government and the state, was 'that the section number sixteen, in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.' Here no distinction whatever is made between entire and fractional townships. 'Every township,' fractional or entire, containing a section sixteen, is entitled to it, if undisposed of; if disposed of, then to its equivalent. The language is too clear to admit of doubt, but if a doubt could be raised, it would be removed by a reference to the ordinance of May 20, 1785, and July 23, 1787, by the first of which it was ordained that, 'There shall be reserved the Lot No. 16 of every township, for the maintenance of public schools within said township;' and further, that 'when any township or fractional part of a township' shall be sold, the deed to the purchaser shall except and reserve 'the lot No. 16 for the maintenance of public schools;' and in the second of which ordinances is the following fractional part of a township, to be given perpetually for the purposes contained in the said ordinance,' viz: the above ordinance of 1785, U. S. Land L., Senate Compilation, vol. 1, pp. 13, 14, 24, 25." *Coombs v. Lane*, 4 O. S. 112.

The lands were appropriated by the United States to the inhabitants of each township for the use of schools, and the title thereto

was vested in the legislature of the state "for the use aforesaid, and for no other use, intent or purpose," and were accepted by the state "upon the trust aforesaid." *Bentley v. Barton*, 41 O. S. 413.

If the entry does not show for what township school lands were selected, user for over sixteen years by the township in which they lie, without any claim by any other township, raises a presumption that they were selected for the former township. *Coombs v. Lane*, 4 O. S. 112.

The gift by the United States to the state of section sixteen, in every township in trust for the use of schools, and for no other purpose whatever, does not exempt them after sale or lease by the state from taxation as other lands are taxed. *Bentley v. Barton*, 41 O. S. 410.

Where an action is started under authority of the act of 97 Ohio Laws 617, for the sale of a tract of school lands, such action is not discontinued by virtue of the act of 107 Ohio Laws 387, and such action may continue and the tract of lands be sold thereunder. *Op. Atty. Gen.* (1918), p. 1561.

SECTION 3182. It shall be the duty of the state supervisor to furnish copies of deeds, leases, field notes, records and other papers and documents that may be in his possession relating to the said lands, and such copies, when authenticated by the certificate and signature of the auditor of state, acting as state supervisor of school and ministerial lands, under the official seal of the auditor of state, shall be received as competent evidence and have like force and effect as the originals. The state supervisor shall charge such fees for said copies as are provided by section 256 of the General Code.

Duty of state supervisor.

HISTORY.—107 v. 357, § 2.

SECTION 3183. Whenever any of the lands appropriated by Congress for the support of schools or for religious purposes, in the opinion of the state supervisor, requires division, or whenever any lessee thereof desires that the same shall be divided and the state supervisor consents thereto, or if it is made to appear to the state supervisor that the description thereof is indefinite or uncertain, the state supervisor is authorized and empowered to appoint the surveyor of the county or employ any competent person to lay off such lands, or to re-survey the same or any part thereof, or to subdivide or correct the description of the same, in such manner as the state supervisor shall direct and such county surveyor shall be entitled to like compensation as may be provided by law for similar services in other cases by such county surveyor. When such laying off or survey is made by a competent person other than the county surveyor, the state supervisor shall determine his compensation therefor, but such compensation shall in no case be greater than would be paid to the county surveyor for like services. Whenever such survey or laying off is made upon the application of the lessee, such lessee shall pay all or such part of the expense thereof as may be determined by the state supervisor.

Division of lands.

HISTORY.—107 v. 357 (358), § 3.

Reservation of  
timber, oil, gas,  
coal, etc.

SECTION 3184. It is declared to be the policy of the state to conserve the timber and mineral resources of the trust, and to this end the state reserves all timber, and all gas, oil, coal, iron and other minerals that may be upon or under the said school and ministerial lands, subject to such uses as may be by law provided, also reserving for the citizens of the state the use of all streams flowing through or abutting upon such lands for fishing and fowling, and so much of the bank thereof as may be necessary for such enjoyment and the protection of such stream from erosion, contamination or deposit of sediment.

HISTORY.—107 v. 357 (358), § 4.

When land  
may be with-  
drawn from  
sale or lease.

SECTION 3185. Whenever any lease to such lands expires, or the state recovers the possession of any such lands by forfeiture or otherwise, such lands may be, by the state supervisor, withdrawn from sale or lease until such time as the state agricultural department shall have had reasonable opportunity to examine such lands and determine whether the same are desirable for experimental purposes, or for reforestation purposes.

HISTORY.—107 v. 357 (358), § 5.

Appraisement  
when land de-  
sired by agri-  
cultural de-  
partment; sale  
or lease.

SECTION 3186. Whenever such lands so withdrawn from sale or lease are by the state agricultural department found to be desirable for experimental or reforestation purposes, it may notify the state supervisor thereof, whereupon the state supervisor shall cause said lands to be appraised as in other cases. Thereupon the state agricultural department shall advise the state supervisor whether it desires to purchase the fee simple title of such lands or to lease the same, and for what term such lease is desired. If the state agricultural department desires the fee simple title thereto, and pays to the state supervisor for the benefit of the trust the sum of the appraised value thereof, the state supervisor shall prepare a deed in fee simple therefor and present the same to the governor for execution. Such deed shall be executed and delivered in the same manner as other deeds in fee simple for school and ministerial lands are executed and delivered. If the state agricultural department desires to lease such lands, the state supervisor shall execute a lease therefor, for such term of years as may be desired by said state agricultural department, upon the conditions as to annual rents reserved, reservations and reappraisements as in other cases herein provided, and said state agricultural department is authorized and empowered to execute and accept delivery of leases.

HISTORY.—107 v. 357 (358), § 6.

Lease by Ohio  
board of ad-  
ministration,  
for coal.

SECTION 3187. Whenever the Ohio board of administration shall notify the state supervisor that it desires to lease any such lands for the purpose of mining coal therefrom for the use of the state, and such Ohio board of administration has entered into an agreement with the lessee of the surface of such lands holding under a lease from



the trustees of an original surveyed township or other board or officer empowered by law to execute and deliver such leases, reimbursing such surface lessee for all damages that he may suffer by reason of the entry upon such lands by the Ohio board of administration for the purpose of operating a coal mine thereon, the state supervisor shall execute a coal lease thereon to such Ohio board of administration. Such lease shall reserve to the state such royalties as may be determined by the state supervisor, the governor and the attorney general acting as a board for such purpose. And the Ohio board of administration is authorized to execute and delivery of [deliver] such lease.

HISTORY.—107 v. 357 (359), § 7.

SECTION 3188. The Ohio board of administration may mine coal from any of the lands set aside by Congress for the support of the schools or the purposes of religion, and leased by it pursuant to law. It may employ for the purpose of operating such mines, all necessary superintendents, foremen, miners, engineers or other labor. Such coal shall be furnished the state and its public institutions at the actual cost of production, such cost to include a sufficient charge to cover the cost of replacement of and interest upon any permanent improvement upon such mining property. Any person employed in such mining operations shall be in the unclassified civil service of the state.

Operation of mines; coal furnished state at cost.

HISTORY.—107 v. 357 (359), § 8.

SECTION 3189. By virtue of his office, the auditor of state shall be the state supervisor of school and ministerial lands, hereinbefore and hereinafter designated state supervisor, and as such shall have general charge of and supervision over the lands appropriated by Congress for the support of schools and purposes of religion as hereinafter provided. He shall maintain a journal in which he shall enter his proceedings.

Supervisor of school and ministerial lands.

HISTORY.—107 v. 357 (359), § 9.

SECTION 3190. He shall see that the laws relating to such lands are faithfully executed. The state supervisor may bring and prosecute an action, in the name of the state, to enforce the provisions and covenants of any lease upon said lands, to restrain the illegal use of such lands or the commission of waste, and to recover damages arising out of the commission of such waste upon any existing cause of action or cause of action that may hereafter arise, or that may be otherwise necessary to enforce the laws relating to such lands. Such action shall be commenced in the county wherein the land or a major portion thereof are [is] situated.

Enforcement of laws.

HISTORY.—107 v. 357 (360), § 10.

SECTION 3191. Whenever there is a cause of action arising out of any default in the payment of rents, or the commission of any waste, or the breach of any covenant

Commission to investigate and settle claims.

of a lease, or for trespass upon such lands, prior to the taking effect of this act, the governor, attorney-general and state supervisor, acting as a commission, may, upon application of the person, persons, partnership or corporation liable or claimed to be liable therefor, investigate the same, and may compromise and settle the claim of the state in such manner and upon such terms as may, in their judgment, be just to those so liable and not prejudicial to or violative of the trust. No right or claim of the state in, or to such lands shall be affected by any action or proceeding at law except as in this act provided.

HISTORY.—107 v. 357 (360), § 11.

Local charge  
and manage-  
ment.

SECTION 3192. The trustees, clerk and treasurer of the civil township in which such land or the major part thereof is situated shall, under the direction of the state supervisor, and as hereinafter provided, have local charge and management of all lands in this state appropriated by Congress for the support of schools or for purposes of religion, as follows:

HISTORY.—107 v. 357 (360), § 12.

Officer having  
interest in  
lease not  
eligible as man-  
aging officer;  
appointment.

SECTION 3193. Should it appear that any such township officer resides on, has a lease of or interest in a leasehold in any such lands, either direct or indirect, he shall not be eligible to act as such officer having local charge and management of such lands. And in such cases, the remaining trustees with the approval of the county auditor shall appoint for the term of such ineligible officer a resident of such township, who does not possess any one of the disqualifications so as aforesaid described. The person so appointed shall, if in the stead of a township trustee, act with the remaining members of the board of township trustees in all matters affecting their duties as herein provided, or, if in the stead of a township clerk, or treasurer, he shall perform all the duties herein charged upon the township clerk or treasurer as the case may be. The clerk shall be allowed one per cent. upon all monies collected by him. The treasurer shall be allowed one-half of one per cent. upon all monies received by him. The trustees shall be allowed one dollar and a half for each day actually and necessarily employed by them. Where such services are rendered in respect to lands under lease from the state, such fees and compensation of the trustees shall be paid out of the monies derived from the rents of such lands in the manner provided in section 16. Where such services are rendered in respect to the sale, or surrender of lease and sale of such lands, fees and compensation of the trustees shall be paid, upon presentment of the voucher of the trustees, attested by the clerk, by the warrant of the auditor of state, out of the proceeds of such sale, or surrender of lease and sale.

Compensation  
of officers.

HISTORY.—107 v. 357 (360), § 13.

SECTION 3193-1. Whenever the trustees meet for the purpose of making distribution of the ministerial trust fund, they shall each receive a fee of ten per centum of the sum to be distributed, but in no case to exceed one dollar and fifty cents each, and the township clerk shall receive a fee of fifty cents for recording the action of the trustees and writing the orders on the county auditor.

Fees of trustees and clerk.

HISTORY.—108 v. Pt. I 618 (620).



## CHAPTER 4

### SCHOOL AND MINISTERIAL LANDS

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- 3195. Duties of clerk.
- 3196. Duties of treasurer.
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- 3198. Making improvements; procedure.
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Duties of trustees.

#### SECTION 3194. The trustees shall:

1. See that no waste of any kind is permitted upon any such lands, that no coal, iron, oil, gas or other minerals are removed or extracted therefrom unless by express authority of the state, that no timber is cut or removed therefrom other than such as may be reasonably necessary for use on the premises for firewood, or fences, or other improvements thereon, and then only upon the written consent of the trustees. And they shall report forthwith, to the state supervisor, all cases of such waste or attempted waste as may come to their knowledge.
2. Recommend to the state supervisor any improvement on any such lands as may be required by the terms of

the lease or leases by which such lands are held by the tenants of the state, or that may be deemed by them necessary for the proper care, conservation or utilization thereof. And, upon the state supervisor approving and ordering such improvements, to make or cause to be made, and carry such improvements to completion.

3. Perform such other duties in relation to such school and ministerial lands as the state supervisor may prescribe.

4. They shall from time to time examine all such lands and require that they be kept in good repair and that the improvements thereon, if any, whether made by the tenant or by the state, be kept in good repair. They shall require that such lands shall be so used as not to destroy or unnecessarily impair their fertility.

HISTORY.—107 v. 357 (361), § 14.

The proposition from the Act of 1802 "which finally became matter of compact between the general government and the state, was 'that the section number sixteen, in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.' Here no distinction whatever is made between entire and fractional townships. 'Every township,' fractional or entire, containing a section sixteen, is entitled to it, if undisposed of; if disposed of, then to its equivalent. The language is too clear to admit of doubt, but if a doubt could be raised, it would be removed by a reference to the ordinances of May 20, 1785, and July 23, 1787, by the first of which it was ordained that, 'There shall be reserved the Lot No. 16 of every township, for the maintenance of public schools within said township,' and further, that 'when any township or fractional part of a township' shall be sold, the deed to the purchaser shall except and reserve 'the lot No. 16 for the maintenance of public schools,' and in the second of which ordinances is the following provision: 'That lot No. 16, in each township or fractional part of a township, to be given perpetually for the purposes contained in the said ordinance,' viz.: the above ordinance of 1785, U. S. Land L., Senate Compilation. vol. 1, pp. 13, 14, 24, 25." *Coombs v. Lane*, 4 O. S. 112.

The lands were appropriated by the United States to the inhabitants of each township for the use of schools, and the title thereto was vested in the legislature of the state "for the use aforesaid, and for no other use, intent or purpose," and were accepted by the state "upon the trust aforesaid." *Bentley v. Barton*, 41 O. S. 413.

If the entry does not show for what township school lands were selected, user for over sixteen years by the township in which they lie, without any claim by any other township, raises a presumption that they were selected for the former township. *Coombs v. Lane*, 4 O. S. 112.

The gift by the United States to the state of section sixteen, in every township in trust for the use of schools, and for no other purpose whatever, does not exempt them after sale or lease by the state from taxation as other lands are taxed. *Bentley v. Barton*, 41 O. S. 410.

## SECTION 3195. The clerk of the township shall:

Duties of clerk.

1. Maintain a record of the proceedings of the trustees, including a record of all bids received and all contracts awarded, of all rents due or collected, in such manner and form as may be prescribed by the state bureau of inspection and supervision of public offices.

2. He shall collect all rents, issuing his receipt therefor, and paying the same over to the township treasurer forthwith, taking the receipt of such treasurer therefor. And whenever, by the terms of any subsisting leases or the law pursuant to which the same have been executed, the collection of rents devolves upon the trustees or treasurer of any original surveyed township, the county commissioner, county treasurer or any other officer; demand of payment and collection of such rents and the payment thereof by the lessee pursuant to this section is hereby fully authorized and sufficient as though so provided in such leases or such laws.

3. He shall perform such other duties in relation to such lands as the state supervisor may prescribe.

HISTORY.—107 v. 357 (361), § 15.

Duties of  
treasurer.

SECTION 3196. The township treasurer shall:

1. Maintain a record of all rents due or collected and payments made to the state auditor, in such manner and form as may be prescribed by the state bureau of inspection and supervision of public offices.

2. He shall receive from the clerk all rents collected, issuing his receipt therefor to such clerk.

3. He shall on the first Monday in the months of November and May of each year pay over all such rents, after deducting therefrom all fees provided for in section 13, and the cost of bonds provided for in section 17, to the auditor of state, and the same shall be by the auditor of state carried to the credit of the original surveyed township or other district of country for which such lands were appropriated, and by the auditor of state paid into the state treasury to be carried in special accounts to be known, respectively, as the School Land Rental Fund and the Ministerial Trust Rental Fund.

HISTORY.—107 v. 357 (362), § 16.

Bonds of of-  
ficers.

SECTION 3197. The duties herein devolved upon the township trustees, clerk and treasurer shall be in addition to the duties otherwise devolving upon them by law, and the bonds of each, executed pursuant to sections 3269, 3270, 3300, 3310 and 3311 of the General Code, shall be liable for the faithful performance of their several duties under this act, and the faithful accounting for all property and moneys that may come into their hands pursuant to the provisions of this act, or under color of office. The state supervisor may, however, require that the bonds required by the aforementioned sections of the General Code shall be increased in such sum as in his opinion will be necessary to fully protect the school and ministerial land trust. If the state supervisor appoints an agent in the stead of a relieved and discharged township officer, such agent shall give bond, payable to the state of Ohio, with sureties approved by the state supervisor, in such sum as the state supervisor shall prescribe, conditioned on the faithful performance of his

State super-  
visor may re-  
quire increase  
of bond.



duties as such agent, and that he will fully account for all property and moneys that may come into his hands as such agent pursuant to law or under color of his office. Such bonds required of agents shall be filed with the state supervisor. The cost of such bonds required of agents and the cost of such increased sum of the bonds of township officers shall be paid out of any funds derived from the rents of the school or ministerial lands.

HISTORY.—107 v. 357 (362), § 17; 108 v. Pt. I 618.

Trustees of school lands have no authority to consent to an assessment against such lands for road improvement. Op. Atty. Gen. (1911) p. 1034.

Township trustees are not authorized under Section 3197, General Code, to pay a proportionate share of the cost of establishing a county ditch through, and which is of benefit to, school lands in Section 16 of an original surveyed township.

Lands in School Section 16 which have been sold or are held under a permanent lease subject to revaluation as unimproved lands every thirty-three years, may be assessed under the rule of benefits, to pay a proportionate part of the cost and expense of establishing a county ditch through said lands. Op. Atty. Gen. (1915), p. 274.

SECTION 3198. Whenever the trustees find that it is desirable to make improvements upon such lands as are under lease or are to be leased, and are authorized so to do by the state supervisor, then they shall proceed to make such improvements as follows: Whenever the estimated expense thereof will not exceed one hundred dollars, they may cause such improvement to be made under contract specifying the character of the improvement, the kind and quality of materials to be used, the labor to be employed and the quality of work to be performed, which contract shall be for a specific sum not in excess of one hundred dollars. No such contract shall be entered into where the completion of an improvement will require more than one such contract. Whenever the probable cost of such improvement shall exceed one hundred dollars, the trustees shall cause plans, details, bills of material and estimates thereof to be prepared in the manner and form provided for in section 2314, of the General Code. Such plans, details, bills of material and estimates shall be submitted, in duplicate, to the state supervisor for his approval; if such approval is given, the state supervisor shall return to the trustees one copy thereof, with the approval written thereon, and thereupon the trustees shall give public notice, in the manner prescribed by the state supervisor in such approval, of the time and place where sealed proposals will be received for making such improvement and a contract awarded therefor. On the day named in such notice, such trustees shall open the proposals and award the contract to the lowest bidder, and shall forthwith transmit a copy of such bid to the state supervisor. No proposals shall be considered unless accompanied by a bond of the bidder with sufficient sureties, conditioned that, if accepted, the bidder will enter into and faithfully perform a proper contract in accordance with the proposal, plans, details, bills

Making improvements; procedure.

of material and specifications, which shall be made a part thereof. Provided, however, that if in the opinion of the trustees the acceptance of the lowest bid or bids is not for the best interests of the trust, they may, with the written consent of the state supervisor, accept another proposal so opened, or reject all proposals and advertise for others in the manner hereinbefore provided. If the authorization of the state supervisor is for the trustees to pay the expense of such improvement, then at the time named in the contract for payment to the person or persons with whom it is made, such trustees shall make or cause to be made, a full, accurate and detailed estimate of the various kinds of labor performed and materials furnished thereunder, with the amount due for each kind of labor and material and the amount due in the aggregate therefor, which estimate shall be based upon actual measurements, and shall give the amounts of the preceding estimates, if any, and the amount of material furnished and labor performed since the last preceding estimate. Such estimate shall be filed with the auditor of state, who shall carefully scrutinize the same, and compare it with the contract pursuant to which it is made. If he shall find the same correct and the amount justly due under the contract, he shall issue his warrant upon the state treasurer for the sum thereof, payable out of any monies in the hands of such state treasurer derived from rents of the lands upon which such improvement is made. If the authorization of the state supervisor is for the trustees to contract with the lessee of such lands for the making of such improvement at the immediate charge of such lessee, then said trustees may enter into a contract with such lessee by the terms of which the improvement will be made by the trustees in the manner herein provided for, but the expense thereof shall be payable by the said lessee as and when the aforementioned estimates are filed and approved by the state supervisor. And in such cases, the amount of such estimates shall become a lien upon the leasehold and the improvements thereon made by the lessee, and shall be proceeded against as is herein provided as to other liens and charges against such leasehold and such lessee, and the sum thereof recovered by such trustees or the state supervisor in the name of the state for the use and benefit of the said trust. Whenever such improvement is completed and fully paid [for] by such lessee, a receipt shall be given to such lessee by the trustees for the money so paid, which receipt shall by said lessee be given to and received by the clerk as a full quitance and payment of rents for such lands due or to become due from such lessee to the amount of such trustees' receipt, and such clerk shall, on his semi-annual settlement with the auditor of state report and credit himself with the sum of such receipt. The cost of all plans and estimates herein provided for shall be included in the cost and expense of such improvement and paid in like manner as such other cost and expense.

SECTION 3199. If the state supervisor finds upon investigation that any such township officer is not satisfactorily administering such trust, or fails to properly perform any duty or act herein required of him, or if any township officer requests to be relieved of duties relating to the school or ministerial lands, the state supervisor may relieve and discharge such officer from the performance of all duties imposed upon him in the administration of the school and ministerial land trust under this act. The state supervisor may thereupon select and appoint in the stead of such discharged and relieved township officer an agent, which agent shall perform all and singular the duties devolved by law upon such relieved and discharged township officer, and shall give bond as required by law. The release and discharge of such township officer shall not otherwise affect him or operate to relieve him from his duties otherwise devolving upon him as such township officer. The agent so appointed may be appointed to act in the stead of more than one township officer.

Removal of officer; appointment of agent.

HISTORY.—107 v. 357 (364), § 19; 108 v. Pt. I 618 (619).

SECTION 3200. Each lessee of such lands holding under a lease at the time of the passage of this act, whether the term of such lease be for ninety-nine years renewable forever or for a less term, shall, on or before the 31st day of December, 1917, or at any later date that may be fixed by the state supervisor by publication for one issue in one newspaper in each county of the state in which such extension of time is granted, report to the state supervisor his name and post office address, a sufficient description of the land so held by him, the number of acres therein, a copy of the original lease, or if such be not obtainable, an affidavit setting forth the reason therefor, the transfer or conveyance under which he makes claim of title, and such other information as may be required by the state supervisor from time to time for the purpose of securing an accurate and permanent record of the titles of the school and ministerial lands of the state. Neglect or refusal so to do shall operate to take from such lessee the benefits of the provisions of this act relating to surrenders of leases and sale.

Report of owner of subsisting lease to state supervisor.

HISTORY.—107 v. 357 (365), § 20.

SECTION 3201. Whenever by the conditions of existing leases or the law pursuant to which such leases have been executed, the power and duty of enforcing payment of rents by distress or other process or proceeding, and of making re-entry for breach of covenant, is charged upon county commissioners, trustees of original surveyed townships, county treasurers, or other officer or officers, such powers and duties shall hereafter be exercised and performed by either the state supervisor or the township trustees and the exercise of such powers and the performance of such duties by the state supervisor or the town-

Powers and duties of state supervisor and trustees relative to existing leases.



ship trustees shall have the same effect and force in law as though the same was written in such leases.

HISTORY.—107 v. 357 (365), § 21.

Transfer or assignment of leases; records.

SECTION 3202. No transfer or assignment hereafter executed of a lease conveying the leasehold interest in and to a part of a tract of land so leased shall be valid unless there is first filed with the trustees of the township having the local charge and management of such lands, duplicate copies of such assignment or transfer, including a description of such assigned or transferred parcel from which such parcel may be accurately determined and platted. The trustees, upon the receipt of such copies, shall transmit one thereof to the state supervisor, who shall make a note thereof on his records, and one thereof to the auditor of the county in which the land or a major part thereof lies. The trustees shall also keep such record thereof as may be prescribed by the state supervisor. Whenever such transfer or assignment is so made, the assignor and assignee shall also, in writing, file with the trustees their joint agreement setting forth the proportion of the valuation made for the purpose of determining the sum of the annual rents of the entire tract which shall be charged to the assigned or transferred parcel.

HISTORY.—107 v. 357 (365), § 22.

Procedure to obtain new lease where original lost or not recorded.

SECTION 3203. Whenever such school or ministerial lands have been occupied for forty years continuously last preceding the taking effect of this act under descents and conveyances claiming to be derived from an original lease to such lands executed by authority of the state, and the execution of such lease, or the record of such descents and conveyances from such original lessee, preceding the year 1874, are lost or not recorded and are not susceptible of proof, the state supervisor, upon the application of the occupant so claiming title, and upon proof being made to his satisfaction of the bona fides of such claim of title, and upon proof of full and complete compliance with the laws pursuant to which such assumed original lease is claimed to have been executed and of the covenants that should or would have been written in such original lease, shall advertise in the township in which such lands are situated, and in the township or district the inhabitants of which are beneficiaries thereof, the fact that such application has been filed, such publication to be made in the manner and for the period of time determined by the state supervisor and the expenses thereof shall be paid by such applicant. If after thirty days following the completion of such publication, the state supervisor is satisfied that the claim of the applicant is bona fide and that he is entitled thereto, he shall execute to such occupant a new lease for such lands conformable to the provisions of the act pursuant to which such lands were originally leased and also of this act in so far as the same may be applicable. Protest, hearings and examination of witnesses upon such applica-

tion, may be had as herein provided in cases where the lessee seeks to surrender his lease and obtain a fee simple title to his holdings.

HISTORY.—107 v. 357 (366), § 23.

SECTION 3203-1. The state supervisor shall, on the first day of February of each year, or at such other time when the provisions of subsisting leases or the law pursuant to which such leases have been executed require revaluations to be made, file with the auditor of the proper county, or other authority at the time charged by law with the duty of appraising, or causing to be appraised, the lands of such county for purpose of taxation, a list of all school and ministerial lands that are required to be appraised for purposes of determining the sum of the annual rents, or of valuation for purposes of leasing or sale. Such auditors, in addition to their other duties, shall make or cause to be made an appraisal of all such lands as in other cases of valuation of lands by them required to be made, provided, however, that in making such appraisal they shall be guided by the following rules and limitations: If the lands are improved pursuant to this act, or have been formerly improved by the trustees of the original surveyed township or other officers having the care, control and management thereof, they shall appraise such lands with the improvements thereon at their true value in money. If the lands have been improved by the lessee or his predecessors in title at his or their own charge, they shall be appraised at their true value in money in their unimproved state, disregarding such improvements. Provided, however, that whenever the law pursuant to which leases executed prior to the taking effect of this act were so executed, requires a different rule and limitation, the law pursuant to which such lease was executed shall govern the action of such appraising officer or officers, but in all cases the value of any minerals or of the easement in or to any stream upon said lands shall not be included in such appraisement.

Annual ap-  
praisement of  
subsisting  
leases.

HISTORY.—107 v. 357 (366), § 24.

SECTION 3203-2. The county auditor or other appraising officers shall report such appraisements to the state supervisor and the trustees who are in local charge and management thereof. Any person affected by such appraisal may, within thirty days after the same shall have been so reported, file with the state supervisor a protest against the same. Whenever such a protest is filed, the state supervisor shall direct the board of trustees to select an arbitrator and the lessee or other person so protesting to select an arbitrator, and the state supervisor shall appoint an arbitrator. Such arbitrators shall meet at the time and place that shall be designated by the state supervisor and review such appraisement, and may either confirm the same or determine upon and fix a different valuation, and their action therein shall, when approved by the

Report of ap-  
praisement to  
state super-  
visor; filing  
protest.

state supervisor, be final: The award made by them shall be filed with the state supervisor and the trustees.

HISTORY.—107 v. 357 (367), § 25.

When new appraisalment may be directed; report to supervisor.

SECTION 3203-2a. If the lessee or the trustees fail within thirty days after notice from the state supervisor to make and report to the state supervisor the name and address of such arbitrator, or if the arbitrators fail to meet at the time and place designated by the state supervisor, the state supervisor may direct a new appraisalment to be made by two householders of the township in which the lands lie. The report of such householders shall be filed with the state supervisor and a copy posted at the usual meeting place of the township trustees, and any person affected by such appraisal may, within thirty days after the receipt of such report by the state supervisor, file with the state supervisor a protest against the same. Should the state supervisor, on hearing, find that the protest is just, he may set aside such last appraisal and direct a new appraisal by two householders of the county in which such lands lie.

HISTORY.—108 v. Pt. I 618 (620).

When tracts appraised separately and as an entirety.

SECTION 3203-3. Whenever revaluation of any lease is required by law to be made, and it appears that the tract included in such lease has, at the time such revaluation is had, been subdivided by assignments or transfer by the lessee, and that such subdivisions are held by different persons, each parcel shall be separately revalued. And should it appear at such time that parcels out of two or more leases have been so assigned or transferred to a person or persons in joint ownership, and the time of making such revaluation is identical as to each such parcel, such several parcels shall be revalued as an entirety. And in such cases, if the time for making such revaluations is not identical as to each such parcel, and the holder of such leasehold title shall make application to have all such parcels revalued on the same day, the state supervisor may, if the interests of the trust are not injured thereby, direct that thereafter such several parcels shall be revalued at the same time as requested in such application.

HISTORY.—107 v. 357 (367), § 26.

How sale or lease executed.

SECTION 3203-4. Except when withdrawn from sale or lease, the state supervisor is authorized and empowered to lease school and ministerial lands as hereinafter provided, and to execute and deliver written leases therefor, signing the same as auditor of state acting as state supervisor of school and ministerial lands, and affixing the seal of the auditor of state.

HISTORY.—107 v. 357 (368), § 27.

Resurvey and lease.

SECTION 3203-4a. Whenever lands are to be leased and the lessee in possession has no option of acceptance pursuant to section 3203-12, the state supervisor may cause such lands to be resurveyed and leased in separate tracts



of not less than ten acres, nor more than one hundred and sixty acres.

HISTORY.—108 v. Pt. I 618 (620).

SECTION 3203-5. In all cases where such lands are to be leased, the state supervisor shall cause publication thereof to be made in such newspapers as he shall direct, or by posting notices thereof in at least five public places within such township. Such publication shall be for such time and made in such manner as he shall direct, and shall advertise the appraised value of each tract of land, the time when proposals will be received or the sale of such leases had, and such other facts as in the opinion of the state supervisor shall be made known. If the state supervisor determines that it is for the best interest of the trust he may provide for the sale of such lease or leases by public auction held upon or in the vicinity of such lands; otherwise he shall require the filing of sealed proposals. He shall give preference to and accept only the proposal for each tract so to be leased which offers the best terms for the trust. He may refuse to accept any or all proposals. The state supervisor may require the lessee of such lands, at the time of the execution of the lease therefor, to execute notes for the payment of the rents reserved, with or without security to his approval.

Publication of intended lease or sale of lease; acceptance of proposals.

HISTORY.—107 v. 357 (368), § 28; 108 v. Pt. I 618 (620).

SECTION 3203-6. The terms of years for which such leases may be executed shall be as follows:

Terms of years.

1. Town lots may be leased for any term not exceeding fourteen years;
2. Lands for agricultural purposes may be leased, if unimproved, for any term not exceeding twenty years, or if improved for any term not exceeding ten years.

HISTORY.—107 v. 357 (368), § 29.

SECTION 3203-7. In each lease there shall be a special reservation to the state of all oil, gas, coal and other minerals; all timber, except such as may reasonably be necessary for firewood and fences upon the premises leased; the right to the state and its citizens to enjoy the piscatorial advantages of any stream that may be on or about upon such lands, and also of the right of egress and ingress to streams, if the lands abut upon such streams if such easement is or may become necessary for such enjoyment, and so much of the bank thereof as may be necessary for such enjoyment, and the protection of such streams from contamination, erosion or deposit of sediment; also reservations of the right of entry to lessees of coal, gas, oil, or other minerals.

Special reservations.

HISTORY.—107 v. 357 (368), § 30.

Rent.

SECTION 3203-8. The rent reserved in such leases shall in all cases be such bonus as may be bid therefor together with five per centum per annum on the appraised value.

HISTORY.—107 v. 357 (368), § 31; 108 v. Pt. I 618 (619).

When and to  
whom rents  
payable.

SECTION 3203-9. All rents shall be payable, in respect to leases executed prior to the taking effect of this act, at such time or times as may be in such leases provided, or if not so provided in any such lease, and in all leases hereafter executed, at such times as may be prescribed by the state supervisor, and shall be payable to the township clerk without demand, and wherever in leases executed prior to the taking effect of this act or the law pursuant to which such leases have been executed, payment of rent is required to be made to the trustees or treasurer of an original surveyed township or to the county treasurer, or other officer, this section shall supersede such other provisions and payment of rents pursuant to this section shall be a full compliance with the conditions of such lease respecting the officer to whom payment of rent shall be made.

HISTORY.—107 v. 357 (368), § 32.

Action for re-  
covery on fail-  
ure of pay-  
ment.

SECTION 3203-10. On failure to make payment of any rent when due and payable, if notes have been required and given to secure the payment of such rents, the state supervisor shall commence an action in the court of common pleas of Franklin county, to recover thereon and prosecute such action to judgment and execution. The cause of action upon such notes shall be deemed to have arisen in said county of Franklin, and summons shall issue as in other civil actions. From the judgment rendered in such action there shall be no appeal by the defendant therein, or stay of execution. If such notes have been required or given to secure the payment of such rents, or when full recovery has not been secured upon such notes, then, on failure to make payment of any rent when due and payable, the state supervisor shall commence an action in a court of competent jurisdiction, in the county wherein such lands are situated, in the name of the state, to recover such rents, or balance of rents, and to the judgment rendered in such action no stay of execution shall be allowed. If, after judgment rendered, either upon such notes or in such action for recovery of rents, on final process, no goods or chattels can be found whereby collection can be made, or if mesne process can not be served, upon the return thereof, the state supervisor or any person designated by him to act in that behalf, shall in the name of and in behalf of the state of Ohio, re-enter upon the lands of the delinquent, and sell at public vendue the right and title of such lease in and to said leasehold estate, to satisfy such rent, damages and costs.

HISTORY.—107 v. 357 (369), § 33.

SECTION 3203-11. The state supervisor shall cause advertisement of such sale to be made by publication in a newspaper in general circulation within the county, and by posting in three of the most public places within the township wherein such land is situated, such advertisement shall give a description of the land, the number of acres, a description of the improvements, the name of the delinquent lessee, the amount of delinquent rent and provable interest and costs, and the time and place of sale. At the time and place stated in such advertisement said leasehold shall be sold to the highest bidder, provided, however, that no bid shall be entertained which will not be sufficient to pay all arrearages of rent, interest thereon and costs. In case the leasehold can not be sold for that amount, the same shall revert to the state as such trustee. And in case said sale yields a sum in excess of said delinquent rents, interest and costs, the surplus shall be paid to the delinquent lessee upon demand.

Advertisement  
of sale.

HISTORY.—107 v. 357 (369), § 34.

SECTION 3203-12. Whenever it becomes necessary to again lease any such lands because of the expiration of the term of a lease, and the lessee has improved said lands, and it shall appear that such lessee has bid for a new lease, but that his proposal is not as advantageous to the trust as other bids, then, if such lessee within five days after the opening of such proposals, in writing offers to accept a lease upon the same terms as those offered by the best bidder, he shall be given preference and the state supervisor shall execute a new lease to such lessee, his heirs or administrators or assigns, upon the terms so offered, provided that such lessee has fully performed all and singular the conditions and covenants of his former lease.

When lessee  
shall be given  
preference for  
new lease.

HISTORY.—107 v. 357 (370), § 35.

SECTION 3203-12a. If upon the advice of the township trustees the state supervisor is of the opinion that any tract of land can yield the best gain by leasing the same upon a contract providing for the farming of the same on shares in lieu of a cash rent, the state supervisor may enter into such a lease and contract. Whenever the state supervisor finds that it is for the best interest of the trust he shall advertise the sale of such a contract and lease, publishing the time and place where sealed bids will be received, or the sale of such lease had, the fact that a lease and contract will be executed in the manner aforesaid and a pertinent description of the land. Such advertisement shall be in such form and manner as the state supervisor shall determine. On the day so advertised such sale shall be had or all bids shall be opened, and the bidder who offers the best terms for the trust shall be awarded such lease and contract. The term of such lease and contract shall be

Lease upon  
contract pro-  
viding shares  
in lieu of  
cash.



governed by the provisions of section 3203-6 of the General Code.

HISTORY.—108 v. Pt. I 618 (621).

Reservations  
in conveyance.

SECTION 3203-13. Each conveyance of the fee simple title, except when such school or ministerial lands are located within the corporate limits of a city, shall contain reservations of all oil, gas, coal and other minerals, and, where the land abuts upon a flowing stream, or such a stream flows through such land, the enjoyment of such stream for fishing and fowling and the right of egress and ingress over such land to and from such stream when the same is or may become necessary for such enjoyment and to all rights and easements granted or hereafter granted under the provisions of law providing for the leasing of such lands for gas, oil, coal, iron and other minerals.

HISTORY.—107 v. 357 (370), § 36, 109 v. 41. Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58. For an analogous section, see P. & A. Code and Supp. thereto § 3210, which was R. S. §§ 1418, 1418a; 70 v. 195, § 133; 99 v. 359; 105 v. 6 (8).

Former vote  
sufficient au-  
thority for  
sale.

SECTION 3203-14. Whenever any vote has been had in an original surveyed township or fractional township, or in any district of country for the benefit of the inhabitants of which congress appropriated any lands for the support of schools or the purposes of religion, by which vote the inhabitants of such township, fractional township or district of country consented to the sale of such lands, such favorable vote shall be and remain a sufficient authorization for the sale, or surrender of lease and sale of such lands within such township, fractional township or district of country as provided by the acts of congress of February 1, 1826, A. D., and February 20, 1833. If the consent of the inhabitants of any original surveyed township or fractional township or of any district of country for whose benefit said school or ministerial lands were set aside and appropriated by congress has not heretofore been obtained, the state supervisor, upon the petition of ten of the inhabitants of such original surveyed township or fractional township, or of twenty inhabitants of such district of country larger than an original surveyed township, shall cause to be submitted to the inhabitants of such township or fractional township or district, as the case may be, the question of whether the school or ministerial lands appropriated by congress for the support of schools or purposes of religion, shall be sold. Such election shall be held at the same time as the general election next following, more than thirty days after the filing of such petition, and shall be conducted and governed by the general election laws of the state insofar as the same may apply. The result of such vote shall be, by the boards of state supervisors of elections under whose supervision such election was conducted, forthwith certified to the state supervisor. Within thirty days after receiving such certified returns, the state supervisor and the attorney-general shall tabulate

Petition for  
sale; election.

the same and publish the result. If a majority of the inhabitants, as shown by the last federal census, of such original surveyed township or fractional township, or of such district of country within which such election was had, vote in favor of such sale, such vote shall be and remain forever a consent of the inhabitants thereof for the sale or surrender of lease and sale of such school and ministerial lands.

HISTORY.—107 v. 357 (370), § 37.

SECTION 3203-15. Whenever the consent of the inhabitants of an original surveyed township or district, as the case may be, pursuant to the acts of congress of February, 1826, and February 20, 1833, has been obtained, the state supervisor, with the consent of the trustees of the township having local charge and management thereof, may dispose of any school and ministerial lands, by sale in the manner following, provided, however, that no such lands shall be sold pursuant to this section if there be a perpetual leasehold interest therein, and if such lands are held upon lease for a less term of years, the purchaser at such sale shall take such lands subject to the incumbrance of such lease but shall be subrogated to the rights of the state under such lease. Within six months preceding the day of sale such lands shall first be appraised as provided in sections 24, 25 and 26 of this act. The state supervisor shall cause the fact of such sale to be advertised in some newspaper of general circulation within the township in which such lands are, for a period of at least thirty days preceding the day when bids shall be opened, advertising therein the day of opening of bids, the valuation of such land, the technical description of such lands and the location thereof, with reference to the highways of such township and a description of the character thereof, and the improvements thereon, and the time and place where sealed bids may be filed with the trustees of the township having the local control and management of such lands.

Sale upon consent of inhabitants; notice of sale.

HISTORY.—107 v. 357 (371), § 38.

SECTION 3203-16. All bids shall be filed with the trustees of the township and by them opened and tabulated at the time and place stated in such advertisement and the lands declared to be sold to the highest bidder. The trustees shall forthwith transmit the original bids, the tabulation thereof and their award to the state supervisor, and upon the successful bidder paying to the treasurer of state upon the draft of the auditor of state the sum of said successful bid, the state supervisor shall prepare a deed conveying said lands in fee simple to such successful bidder and deliver it to the governor of the state, together with his certificate, under the seal of the auditor of state, that all papers required by law have been properly filed, that the proceedings are according to law and the purchase

Opening, tabulating and transmitting of bids to state supervisor.

money fully paid. When signed by the governor, countersigned by the secretary of state, and sealed with the great seal of the state, such deed shall be returned to the state supervisor, who shall transmit it to the trustees, who shall deliver it to the grantee.

HISTORY.—107 v. 357 (371), § 39.

Sale must not  
be for less  
than appraised  
value.

SECTION 3203-17. No lands shall be sold under the preceding section for less than the appraised value thereof as determined in the manner provided by sections 24, 25 and 26.

HISTORY.—107 v. 357 (372), § 40.

Terms of sale.

SECTION 3203-18. Such land may be sold for cash to be paid within ten days following the day of opening the bids, or, unless the principal value thereof consists in the growing timber thereon, may be sold upon terms of one-third cash to be paid within ten days next following the opening of the bids, one-third to be paid in one year and one-third to be paid in two years after the day of such partial cash payment, interest to be paid upon the deferred payments at the rate of six per centum per annum, payable annually, and when so sold, whenever full payment of both the principal and interest of the purchase price has been made as provided by section 39 a deed therefor shall be executed as therein provided.

HISTORY.—107 v. 357 (372), § 41.

Payment of  
costs; disposi-  
tion of bal-  
ance.

SECTION 3203-19. The cost of such proceedings shall be paid on the voucher of the trustees and the warrant of the auditor of state, out of the proceeds of such sale. The balance of such proceeds shall, if the lands are for the support of schools, be placed in the "common school fund" as provided by law, and if the lands are for the purposes of religion, shall be placed in the "ministerial fund" as provided by law.

HISTORY.—107 v. 357 (372), § 42.

Depository interest on moneys paid into the state treasury since July 1, 1917, on account of sales of school and ministerial lands, and left there uninvested by the commissioners of the sinking fund but, together with other moneys, deposited in the state depositories, should be credited to the interest accounts in the common school fund and the ministerial trust fund, respectively.

Where no separate account has been kept of specific moneys placed in depositories the average rate obtained by the state on inactive deposits should be so credited.

The commissioners of the sinking fund have no authority respecting the control and deposit of money in the hands of the treasurer of state and belonging to the ministerial trust and common school funds. They may withdraw such funds for investment in specified securities but may not control the powers and duties of the treasurer of state with respect to the depositing of general balances. Op. Atty. Gen. (1918), p. 377.

Surrender of  
lease.

SECTION 3203-20. Except when lands have been withdrawn from sale, the lessee of any tract or lot of school or ministerial land who holds under a permanent lease or



lease for ninety-nine years, renewable forever, may surrender such lease and obtain the fee simple title to such lands in the manner following:

HISTORY.—107 v. 357 (372), § 43.

SECTION 3203-21. At any time within three years next following June 29, 1917, any lessee, holding under a lease renewable forever, may make application to the state supervisor setting forth a description of the lands for which he desires a title in fee simple, the quantity thereof, the date of his lease or assignment of lease under which he claims title, the price per acre and the total price which he desires to pay for such title in fee simple, and such further information that may be required by the state supervisor. The state supervisor thereupon shall make such investigation of the title of such applicant, and of the history of the tract of land in question, as he shall deem necessary to make a determination of the price which such applicant shall be required to pay for such title in fee simple. In making such determination the state supervisor may take into consideration the amount of taxes for state, county and other purposes which have been charged upon such lands and paid, the moral obligations which may rest upon the state because of the neglect of its administrative officers to administer the trust and the terms of the trust as defined in the acts of congress relating thereto; but nothing herein shall be construed as creating any legal obligation against the state arising from the payment of such taxes or such neglect of its administrative agencies. The state supervisor shall determine what price the applicant shall pay for the fee simple title to such lands and the manner of payment, and whenever the applicant or his assigns shall have paid the said purchase money in full into the state treasury, the auditor of state shall prepare a deed for such lands conveying the same in fee simple to such applicant or his assigns, and shall deliver such deed to the governor of the state, together with his certificate that all papers required by law have been properly filed and that all conditions precedent to the execution of such deed have been complied with. When signed by the governor, countersigned by the secretary of state and sealed with the great seal of the state of Ohio, such deed shall be returned to the state supervisor who shall transmit it to the applicant or his assigns.

HISTORY.—107 v. 357 (372), § 43-1; 108 v. Pt. I 618 (619).

SECTION 3203-21a. All deeds heretofore executed pursuant to section 3203-21 of the General Code for any lands for which the full purchase price as determined pursuant to said section 3203-21 of the General Code has been paid into the state treasury, and the sales of which lands are evidenced by such deeds, are hereby confirmed, and the filing of an application, the determination of a price by the state supervisor and the payment in full into the state

How lessee  
may obtain  
title in fee  
simple.

What deemed  
compliance  
with law in  
conveyance.

treasury of the price so determined shall be held to be a sufficient compliance with the law, though otherwise the conditions precedent to the execution and delivery of such deed have not been complied with, and the purchasers and their assigns and heirs at law shall hold the said lands by a title as good and valid as though the proceedings for such sale had been in complete conformance with section 3203-21 of the General Code.

HISTORY.—108 v. Pt. I 618 (621).

Application to trustees to surrender lease and acquire title in fee; hearing objections.

SECTION 3203-22. Any lessee desiring to surrender his lease and acquire the fee simple title to such lands, shall, unless within the three year period therein provided he has made application as provided in section 43-1, file his application with the trustees of the township having the local control and management of such lands, setting forth a description of the lands for which he desires the fee simple title, the quantity thereof, the date of his lease or assignment of lease under which he claims title, the price per acre, and the total price which he desires to pay for such title, which in no event shall be less than the appraised value of such land. Thereupon the trustees shall advertise, by posting in at least five public places within the township, the fact that such application has been filed with them. Such advertisement shall set forth a true copy of the application, and the time and place at which the trustees will act thereon. At the time and place so fixed, the trustees shall hear all objections to consenting to such surrender, which objections may be oral or by writing, or both, and shall, after such full hearing, determine whether it will be for the best interest of the beneficiary of the trust to accept said proposal. If they decline to accept, their action upon such application shall be final, but in such case such application may be again made after the expiration of six months. If they accept such proposal, they shall forthwith transmit such application and a certificate of their action thereon, together with all written objections and a statement of all oral objections, to the state supervisor.

HISTORY.—107 v. 357 (373), § 44.

Notice of approval.

SECTION 3203-23. If the state supervisor finds that such objections, if any, are not substantial and sufficient, and if he finds that the action of the trustees is for the best interest of the trust, then he shall notify the trustees thereof, and they shall at once notify the lessee of such approval of their action so given.

HISTORY.—107 v. 357 (373), § 45.

When application for surrender shall be considered.

SECTION 3203-24. Except upon surrender of lease and sale as provided in section 43-1, in no case shall such application for surrender be considered, or any conveyance of the fee simple title be executed, where the revaluation of such lands has not been made in full compliance with

the act pursuant to which such original lease was executed, or where the other terms, conditions and reservations of the lease under which such applicant claims title, have not been fully complied with, special laws heretofore enacted notwithstanding. Provided, however, if revaluation has not been made as required by the original lease or the law pursuant to which it was executed, and instead thereof revaluation has been made pursuant to sections 24, 25 and 26 within one year from the time of taking effect of this act, and the rents due upon such revaluation have been fully paid, such former failure to make or cause to be made such revaluations shall not be a bar to such surrender and sale.

HISTORY.—107 v. 357 (373), § 46.

Conveyance of fee simple titles to permanent leaseholds of school and ministerial lands of the state, which have not been revalued pursuant to the provisions of the original act under which such leases were executed, may be made by the state to the lessees or their assigns, and deed executed in compliance with the provisions of Sections 3203-28, 3203-22, 3203-23, 3203-25 and 3203-26 of the General Code. Op. Atty. Gen. No. 2903, Feb. 25, 1922.

SECTION 3203-25. If within twenty days after such notice to the lessee of the approval of the action of the trustees accepting the applications of such lessee, such lessee shall file with the trustees a sufficient release of the original lease under which he claims title, and of his right, title and interest in said lands under such lease, and shall have paid to the state treasurer, upon the certificate of said trustees and the draft of the state auditor the full sum required by him to be paid for the state lands, and have filed the receipt of such treasurer with said trustees, and shall have paid to such trustees the proportionate amount of rent due under said lease for that part of the current year to and including the day of such approval of the action of the trustees by the state supervisor, the said trustees shall certify to the state supervisor that such lessee has fully complied with all conditions of his lease, has paid the rents under such lease in the manner aforesaid, and has filed such a sufficient release. Thereupon, the state supervisor, being first satisfied that all such conditions have been fully complied with, and that the purchase money has been paid in full to the state treasurer, shall prepare a deed conveying such lands in fee simple to such lessee, and shall deliver the same to the governor of the state, together with his certificate that all papers required by law have been properly filed and that all conditions precedent to the execution of such deed have been complied with. When signed by the governor, countersigned by the secretary of state, and sealed with the great seal of the state, such deed shall be returned to the state supervisor, who shall transmit it to the trustees to be by them delivered to the grantee.

When deed shall be executed and delivered to lessee.

HISTORY.—107 v. 357 (374), § 47.



Terms of such  
surrender and  
conveyance.

SECTION 3203-26. Such surrenders and conveyance may be made upon terms of cash to be paid within twenty days after such notice of the approval by the state supervisor of the action of the trustees, or one-third cash at such time, and the remaining two-thirds in two equal installments payable with six per centum interest per annum payable annually, in one and two years after the date of such first payment. And whenever the payments are so deferred, the lessee shall promptly make such payments, upon the certificate of the trustees and the draft of the state auditor, to the treasurer of state, and take his receipt therefor, provided, however, that until such purchase money is fully paid, no timber shall be cut or removed except what may be reasonably necessary for fences and improvements, upon the written consent of the trustees.

HISTORY.—107 v. 357 (374), § 48.

When sur-  
render and  
sale shall be  
made pursuant  
to general  
law.

SECTION 3203-27. Whenever, by the terms of any general law, surrenders of leases and the acquisition of a fee simple title from the state was provided for upon terms and conditions affecting substantial property rights, and differing from the provisions of this act regulating surrenders of leases and sales, the surrender of such leases and sale of such lands to such lessee shall be had pursuant to such general law. Provided, however, that such lessee may, in writing filed with the state supervisor, waive his rights and privileges under such general law, and proceed under the provisions of this act to make such surrender and obtain such fee simple title.

HISTORY.—107 v. 357 (375), § 49.

Proceedings  
where privilege  
has been  
granted under  
general law.

SECTION 3203-28. Wherever, by any general law the privilege has been granted to lessees, whose leases require revaluations to be made, to surrender their leases and obtain fee simple titles to such leased lands for the sum of the valuation made for purposes of determining the sum of the rent reserved, and vested property rights have been acquired therein, and it has become impossible through no fault of such lessee, his heirs or assigns, to comply with the technical requirements of such general law, the lessee of such lands, his heirs or assigns may make application to the trustees as hereinbefore provided for surrender of leases and the securing of fee simple titles. And thereupon such proceedings as to advertising, hearings of objections and action upon such application by the trustees, shall be had as in other cases of applications for surrender of lease hereinbefore provided for, excepting however, that if such application be rejected by the trustees their action in that regard shall be certified to the state supervisor together with all written objections and a statement of all oral objections. Upon such application and the certificate of the trustees being filed with the state supervisor, all papers in the matter shall be by him referred to a commission consisting of the governor, attorney general

and state supervisor. Said commission shall determine whether the action of the trustees is for the best interest of the trust and also equitable to the said lessee, and shall also determine what sum less than the actual value of such lands shall be accepted by the state for such fee simple title, consideration being given by said commission to any moral obligation arising from the continuation in effect without repeal of the general law providing for the procurement of fee simple titles for the sum of the said valuation. Provided that nothing herein shall be construed as raising a legal obligation upon the state to so do, or to modify any law now in force, or to effect [affect] the repealing cause [clause] of this act.

HISTORY.—107 v. 357 (375), § 50.

SECTION 3203-29. Wherever, by any general law that may be in force at the time of taking effect of this act the privilege has been granted to lessees holding under leases which do not require revaluation for the purpose of determining the sum of the rent reserved, to surrender their leases and obtain the fee simple title to such leased lands for the sum of the valuation originally made, and it has become impossible to comply with the requirements of such ancient statute; the state supervisor may waive such requirements and accept such surrender, and deeds shall be executed as provided for by such general law upon compliance with those provisions of such general law that can reasonably be performed.

When state supervisor may waive requirements of ancient statute.

HISTORY.—107 v. 357 (376), § 51.

SECTION 3203-30. Whenever such lands contain minerals, and the lessee thereof desires to surrender his original leasehold interest and obtain in lieu thereof a lease for the minerals or to purchase the minerals in and under such lands, he shall make application therefor to the state supervisor, whereupon the state supervisor, attorney-general and governor shall, if they find that the making of such surrender and the execution in lieu thereof of a lease for such minerals is advantageous both to the state and to the trust, determine the value of the original leasehold estate which is desired to be so surrendered to the state. If, after such determination, the applicant still desires to make such surrender and obtain in lieu thereof such lease for the minerals, the state supervisor, upon such surrender being first made as in other cases herein provided for surrenders of leases, execute a lease to such applicant for the minerals agreeably to section 3209-1 of the General Code. The value of the surrendered leasehold estate as determined as herein provided, shall be taken and allowed as a credit upon the reservation of and amounts due the state under such mineral lease for rents and royalties.

When lessee on surrender desires lease or purchase of minerals.

HISTORY.—107 v. 357 (376), § 52.

Provisions in lease required relative to damages, when state executes lease for oil, gas, etc.

SECTION 3203-31. Whenever such lands are sold or the fee simple title acquired by surrender of lease and sale, and thereafter the state executes a lease for oil, gas, iron or other minerals upon such lands, such lease shall provide for the payment by the lessee, and such lessee shall be bound to pay, to the owner of the fee simple title all damages that such owner may suffer by reason of entry upon such lands for the purpose of developing, extracting, piping, storing or removing oil or gas, or prospecting for or producing coal, iron, or other minerals, or for sinking shafts, drifting, depositing waste material, or erecting or maintaining buildings or constructions pursuant to the terms of such lease. If such owner and the lessee can not agree upon such damages, and such owner so elects, a board of arbitration shall be selected, one members [member] to be appointed by the state supervisor, one by the lessee and one by the owner, which board of arbitration shall be governed by the provisions of chapter 1, division 9, title 4 of the General Code, but if such owner so elects, he may proceed to recover such damages by action at law instead of through the action of such arbitrators; but this provision shall not apply to lands upon which such leases for oil, gas, coal, iron or other minerals have been executed prior to such sale or surrender and sale. If the state or any agency of the state shall enter upon such lands for such purposes, the damages to the owner shall be determined by a board of arbitrators selected as follows: one arbitrator to be selected by the state supervisor, one by the owner and one by the two so selected, and the damages determined by such arbitrators shall be a legal claim against the state and their award shall be final.

HISTORY.—107 v. 357 (376), § 52-1.

Lands to which 3209-1 applies.

SECTION 3203-32. The provisions of section 3209-1, G. C., shall extend and apply to all lands appropriated by the congress of the United States for the support of schools and education.

HISTORY.—107 v. 357 (377), § 53.

Apportionment of rents to district, etc.

SECTION 3203-33. Whenever such school lands are held in trust for the benefit of the inhabitants of a district of country other than an original-surveyed township or fractional township, the auditor of state shall, prior to making the annual distribution of the interest upon the common school fund, ascertain the sum of the rents paid into the state treasury on account of rents earned in each such district of country, and shall make apportionment thereof to each county any part of which lays within such district of country, in the proportion which the number of youth of school age residing within such district of country credited to such county by the report made pursuant to section 7799-1, of the General Code, bears to the whole number of youth of school age residing within the entire district of country, and in each February settlement sheet



he shall enter the amount of money payable to the county treasurer upon such apportionment, designating the source thereof and the section of the General Code pursuant to which distribution thereof will be made in such county. The county treasurer in each February settlement with the auditor of state, shall retain in the county treasury from the taxes collected by him the amount of the funds so credited as payable to him at that time. Or if such amount for any county exceeds the amount of state taxes collected therein the auditor of state shall draw his warrant in favor of the treasurer of such county for the balance of such sum so apportioned, and transmit it to such county treasurer, and the treasurer of state shall pay such warrant upon its presentation to him.

HISTORY.—107 v. 357 (377), § 54.

SECTION 3203-34. Whenever such school or ministerial lands are held in trust for the benefit of the inhabitants of an original surveyed township or fractional township, and there is money in the hands of the state treasurer arising from the rents of such lands, the auditor of state shall, prior to making the annual distribution of the interest upon the common school fund, ascertain the sum of the rents earned respectively by the school and ministerial lands of each township or fractional township and paid into the state treasury, and he shall in each February settlement sheet enter the amount payable to the county treasurer of such county for the use of each original surveyed township in such county, designating the source thereof, the original surveyed township for whose use it is paid and the proportions thereof that are for the benefit of the common schools or for the purposes of religion, and the section of the General Code, pursuant to which distribution thereof will be made in such county. The county treasurer in each February settlement with the auditor of state, shall retain in the county treasury from the taxes collected by him the amount of the funds so credited as payable to him at that time. Or, if such amount for any county exceeds the amount of state taxes collected therein, the auditor of state shall draw his warrant in favor of the treasurer of such county for the balance of such sum and transmit to such county treasurer such excess, and the treasurer of state shall pay such warrant upon presentment to him.

Entry of  
amount payable  
to each county.

HISTORY.—107 v. 357 (377), § 55.

SECTION 3203-35. Money received by the county treasurer under sections 3203-33 and 3203-34 of the General Code, derived from the rents of lands appropriated for the use of common schools, shall be apportioned by the county auditor at the time he makes the apportionment of the interest on the common school fund upon the basis of the enumeration of youth of school age in each school district or part of a school district lying within the original

Apportionment  
by county  
auditor.

survey township or other district of county to which such money belongs.

HISTORY.—107 v. 357 (378), § 56; 108 v. Pt. I 618 (620).

Annual dividend of ministerial fund.

SECTION 3205. Whenever there is money in the hands of the county treasurer derived from rents of ministerial lands after the payment of just claims and expenses, the trustees shall meet at the office or residence of the township treasurer on the fourth Monday in April each year and make a dividend thereof to each religious society as hereinafter provided. And upon the order of such trustees the county auditor shall issue his warrant upon the county treasurer and such treasurer shall pay the same to such religious societies.

HISTORY.—107 v. 357 (379).

Who entitled to participate in ministerial fund; proportion.

SECTION 3206. Each denomination of religious societies having members residing in such township shall be entitled to participate in such ministerial fund. After assuming a name each of them shall appoint an agent to receive its proper proportion, who shall produce to the trustees a sworn certificate, containing a list of the names of the members enrolled in the records of such society residing in such township, but no person shall be considered a member who is under fifteen years of age. At such annual meeting the trustees shall distribute such funds to the several societies applying by their agents and producing such certificates, in proportion to the number of their members residing in such township, without regard to the township in which any such society regularly assembles for public worship.

HISTORY.—R. S. § 1414; 61 v. 74, § 13; 41 v. 62, § 1; S. & S. 916; S. & C. 1582; S. & C. 1580.

Certain leases of school lands made valid.

SECTION 3208. All leases of school lands made by the trustees of the original surveyed townships or by the county commissioners of any county, before the first day of June, in the year one thousand eight hundred and thirty-one, although not acknowledged before any officer authorized to take the acknowledgment of deeds or other instruments in writing for the conveyance, lease or incumbrance of lands, shall, between the lessors and lessees, their grantees, heirs and assigns, be held valid to the same extent and for the same purposes that they would have been, had they been so acknowledged.

HISTORY.—R. S. § 1416; 80 v. 218; 35 v. 63, § 1; S. & C. 1582.

Auditor of state authorized to lease unsold portions of sections 16 and 29 and other land in lieu thereof for oil, gas or other minerals.

SECTION 3209-1. The auditor of state is hereby authorized to lease for oil, gas, coal, or other minerals, any unsold portions of section sixteen and section twenty-nine, or other lands granted in lieu thereof, of the original surveyed townships, for the support of schools and religion, to any person, persons, partnership or corporation, upon such terms and for such time as will be for the best interest of the beneficiaries thereof, but nothing herein shall be

construed so as to require the auditor to so lease; and the auditor of state in such lease is empowered to grant to such lessee the right to use so much of the surface of such land as may be reasonably necessary to carry on the work of prospecting for, extracting, piping, storing and removing all oil, or gas, or prospecting for and producing coal or other minerals, and for sinking shafts, depositing waste material and maintaining such buildings and constructions as may be reasonably necessary for the mining, handling and removal of such coal or other minerals; provided, however, that such lease shall require the lessee to pay all damage to the holder of the lease holding under a lease from the trustees of the original township.

Should the lessee of the gas, oil, coal, or other minerals, be unable to agree with the lessee holding under lease from the trustees of the original township, upon the damages sustained by the latter by reason of such occupancy of the surface, then the determination of the damages shall be submitted to the arbitrament or umpirage of a commission of three consisting of one person selected by each of the lessees, and one person selected by the attorney general. Such commission shall hear evidence, shall have the powers given to arbitrators under the provisions of chapter 1, division 9, title 4, of the General Code, and shall make an award in writing, signed by a majority of them. Such award shall be filed with the auditor of state and shall be binding upon all parties.

When question of damages submitted to arbitration; where award shall be filed.

Should the lessee of the oil, gas, coal, or other minerals, fail to pay the damages so awarded, the auditor of state shall file a certified copy of the award in the court of common pleas of the county in which the lands, or the greater part of the lands, may be located, and proceedings thereon may be had as provided for awards of arbitrators by sections 12155, 12156, 12158, of the General Code.

Proceedings on failure to pay damages awarded.

In the event of any productive oil or gas wells having been drilled on any of said lands or coal or other minerals taken therefrom prior to obtaining a lease therefor, said auditor of state is hereby authorized to settle, adjust and compromise with the person, persons, firm or corporation, drilling such wells or removing other minerals upon such terms as may be just and equitable to such persons, and for the best interest of the beneficiaries of said lands. Provided that before any such lease, settlement, adjustment or compromise shall be binding, or in any manner affect existing rights or claims, the same shall be presented to and approved by the governor and attorney general, and providing further, that all moneys arising from any such lease, settlement, adjustment or compromise shall be paid to the treasurer of state monthly, to be disposed of in the same manner as is provided by law for the proceeds of sale of said section.

Settlement for minerals taken from lands prior to lease; approval by governor and attorney general.



Re-entry and further procedure when satisfactory settlement cannot be secured.

And further provided, that if, in such cases, a satisfactory settlement cannot be secured, then upon ten days' notice upon the person sought to be dispossessed the auditor of state by and with the consent of the attorney general and governor is authorized to re-enter upon such lands, to hold such oil or gas wells or coal or mineral developments with all the appurtenances thereunto belonging, and to either lease the same under the provisions of this act, or to operate such producing wells, or developments and dispose of the proceeds upon the market, and also to pay the net proceeds arising therefrom into the state treasury to the credit of the irreducible debt of the state, to be held and disbursed as other monies derived from sales of school and ministerial lands, and he shall also file a detailed statement of all receipts and expenditures covering such operation and sale.

When facts shall be submitted to board of arbitration.

If it should be made to appear to the auditor, attorney general and governor that the occupancy of such lands, so re-entered, and the making of improvements thereon in the development of such gas or oil wells, or coal or other minerals, was in good faith, there shall be submitted all the facts to a board of arbitration, one member of which shall be appointed by the governor, one by the auditor of state and one by the trespasser, and such board of arbitration shall determine what just and equitable settlements shall be made with such trespasser for such improvements and the auditor of state is authorized and directed to make a settlement with such trespasser in accordance with the finding of such arbitration board.

HISTORY.—105 v. 6; 104 v. 224.

In connection with G. C. § 3209-1 as amended in 105 v. 6 the legislature provided in 105 v. 6 (9) § 4 "All sales or leases of canal, public or other state land shall exclude all oil, gas, coal or other minerals on or under such lands, and all deeds executed and delivered by the state shall expressly reserve to the state all gas, oil, coal or other minerals on or under such lands with the right of entry in and upon said premises for the purpose of selling or leasing the same, or prosecuting, developing or operating the same and this provision shall effect and apply to pending actions." This section was amended in 106 v. 245; and the attorney general numbered such amended section G. C. § 22-1.

Held, that Section 3209-1, General Code, applies to unsold portions of Sections 16 and 29, or other lands granted in lieu thereof, of original surveyed townships under lease. Op. Atty. Gen. (1915) p. 538.

Held, that this section vests the power of leasing unsold portions of Section 16 Lands in the State Auditor, and that the duty of determining the terms and conditions upon which such lease shall be made is entrusted to said officer. Op. Atty. Gen. (1919) p. 698.

Re-entry in case of non-payment.

SECTION 3228. If the purchaser of any tract of school or ministerial lands fails to make any payment due to the state as trustee within thirty days after such payment is due and payable, the state supervisor in person or by agent shall re-enter upon such lands and the state as such trustee shall be restored to its former estate and such purchaser shall cease to have or possess any estate or interest therein; provided, however, that such purchaser shall be entitled to have restored to him all monies that he may have paid to the state as such trustee less interest thereon at the rate of six per cent per annum from the day of sale together with

the costs of the proceedings under which such sale was had, and the costs of such re-entry and the state supervisor is authorized to issue his voucher for such sum in favor of such purchaser, and, upon presentment thereof to the auditor of state the auditor shall issue his warrant thereon payable out of monies that shall have been paid into the common school fund or ministerial trust fund as the case might be on account of such land.

HISTORY.—107 v. 357 (381).

SECTION 3229-1. In proceedings commenced under the provisions of sections 3213, 3221, 3231 and 3237, notice of the pendency thereof shall be given to the auditor of state thirty days before any order of court may issue therein, and all orders of the court and returns of appraisers under sections 3214, 3218, 3219, 3220 and 3222 of the General Code shall be certified to the auditor of state ten days prior to any action or proceedings thereunder. The auditor of state or attorney general may intervene in any such proceedings.

Notice of pendency of proceedings to sell before order shall issue.

HISTORY.—105 v. 6 (9).

SECTION 3239. The money paid into the state treasury on account of sales of lands granted by congress for the purposes of religion, known as section twenty-nine, and on account of the sale of minerals thereon, shall constitute the "ministerial trust fund" of the state, of which the auditor of state shall be the superintendent, and the income therefrom shall be used exclusively for religious purposes, in the manner designated by law.

The ministerial trust fund.

HISTORY.—107 v. 357 (379).

SECTION 3243. When in any sale of school or ministerial lands any mistake is made in the calculation of the amount to be paid or in the computation of interest, either inadvertently or designedly by any officer having charge thereof, the auditor of the proper county shall examine into and correct such mistake. Upon being notified of it, a purchaser thereof shall immediately pay the sum he is found to be in default. The auditor shall institute a suit against any purchaser who neglects to pay the amount so found to be unpaid, in the court of common pleas of the county in which such lands are situated, in his own name, for the use of the proper township, and shall prosecute such action to final judgment and execution. If the mistake be by excess of payment, the auditor shall make the correction by paying out of the county treasury the amount overpaid, and charge it to the state or township, as the case requires.

Error in calculation of purchase money shall be corrected.

HISTORY.—R. S. § 1440; 69 v. 76, § 4.

SECTION 2693. The county treasurer shall remit to the treasurer of state, all moneys received for section sixteen and section twenty-nine, as soon after they are received as practicable, and in no case later than the end of the fiscal quarter in which received. He shall immediately forward one of the receipts returned therefor to the auditor of state.

Moneys to be forwarded to state treasurer.

HISTORY.—R. S. § 1124; 44 v. 120, § 2; S. & C. 1502.

## CHAPTER 5

### CLASSIFICATION OF PUBLIC SCHOOL DISTRICTS

#### SECTION

- 4679. School districts classified.
- 4680. City school districts.
- 4681. Village school districts.
- 4682. Village with less than five hundred thousand valuation not a village school district without vote of electors.
- 4682-1. When and how village school district may dissolve and join rural school district.
- 4683. Title passes to rural district Board of Education.
- 4684. County school district defined.
- 4685. Territory must be contiguous.
- 4686. Change of classification of school district upon change of character of municipality.
- 4687. School district in newly created village.
- 4688. What village district may become exempt from supervision of county board.
- 4688-1. When a census of the population of village district may be taken and how.

#### SECTION

- 4688-2. Village district exempt from county supervision ineligible to certain state aid.
- 4688-3. District separated from mainland may withdraw from supervision district and be under county supervision.
- 4689. Disposal of property in such cases.
- 4690. Title to property when territory annexed to city or village.
- 4692. Transfer of territory from one school district to another.
- 4696. Transfer of school district or part thereof to contiguous exempted village, city or county school district.
- 4696-1. Transfer of territory in a city or village and constituting exempted village school district to the school district of the municipality in which said territory is located.
- 4696-2. Notice of hearing.
- 4696-3. Probate judge to determine case for or against transfer. Equitable division of funds in case judgment in favor of transfer.

School districts classified.

SECTION 4679. The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts.

HISTORY.—R. S. § 3885; 70 v. 195, § 1; 84 v. 184; 93 v. 167; 97 v. 335; 104 v. 133; 109 v. 552.

The subject matter of schools, including school districts and establishing and changing the same, is one of a general nature; and all legislation as to them must be general, having a uniform operation throughout the state. *State ex rel. v. Spellmire*, 67 O. S. 77; *Bartlett v. State*, 73 O. S. 54.

Common school districts and boards of education are not corporations within the meaning of Section 1 of Article XIII of the Constitution.

Under Section 26, Article II, and Section 2, Article VI, of the Constitution, laws regulating the organization and management of common schools must have a uniform operation throughout the state. *State v. Powers*, 38 O. S. 54.

Although the actual disbursement of school funds is by statute committed to township, city and village boards of education, the maintenance of schools is such a lawful public purpose in which all the people of the county are interested, that the board of county commissioners of a county may take and hold any property devised or bequeathed to it for school purposes. *Christy v. County Commissioners*, 41 O. S. 711.

A board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating a liability. *Finch v. Board of Education*, 30 O. S. 37; *Board of Education v. Volk*, 72 O. S. 469.

The constitutionality of the Act of the Legislature (104 O. L. 133) of which this and subsequent sections of the General Code



were a part, was upheld in the case of *Cline v. Martin*, 94 O. S. 420; *Wogoman v. Board of Education*, 95 O. S. 409.

The sub-district school has now no legal existence in Ohio, inasmuch as Section 4679 designates the only authorized school districts. *Patton v. State*, 30 O. C. A. 302.

See Opinions of Attorney General, No. 2234 (1921), cited under Sec. 7691.

SECTION 4680. Each city, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a city school district.

HISTORY.—R. S. § 3886; 70 v. 195, § 2; 81 v. 71; 84 v. 184; 85 v. 91; 93 v. 39; 93 v. 165; 94 v. 125; 97 v. 335.

SECTION 4681. Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district.

HISTORY.—R. S. § 3888; 74 v. 140, § 4; 97 v. 335; 98 v. 217; 103 v. 545 (546).

No vote of the electors of a village is necessary to the establishment of a school district created by this section. *Buckman v. State*, 81 O. S. 171.

Under an earlier, and somewhat different, form of a statute on this subject it was held that a township school located in a sub-district did not pass to the board of education of a village school district upon the incorporation of the territory of the township sub-district into a village. *Board of Education v. Board of Education*, 41 O. S. 680.

For other decisions construing the earlier forms of statutes relating to this subject see: *Cist v. State ex rel.*, 21 O. S. 339; *Cline v. Martin*, 3 App. 446; 21 O. C. C. (N. S.) 404; *State ex rel. v. Raine*, 4 O. C. C. 72; *Eckstein v Board of Education*, 10 O. C. C. 400.

An incorporated village which forms part of a township school district becomes ipso facto a village school district upon the attainment of the tax duplicate valuation prescribed by statute. *Op. Atty. Gen.* (1911), p. 537.

Under the provisions of this section as it read prior to its amendment, 103 O. L. 546, it was held that when a village attains the required tax duplicate valuation it constitutes a village school district, but that when such village attains the required tax duplicate valuation it must remain a part of the township school district under the jurisdiction of the township board of education until the members of the board of education of the village school district are elected at a regular election and properly organized. *Op. Atty. Gen.* (1912), p. 1282.

A village school district once organized as such, and whose tax valuation falls below \$500,000, is not by that act alone dissolved and the board of education of such district will continue to perform the duties thereof. *Op. Atty. Gen.* (1917), p. 902.

See *Contra Op. Atty. Gen.* (1916), p. 1388.

Where the county board of education, under authority of Section 4736, G. C., has created a new school district out of a village school district, containing a tax valuation of not less than \$500,000, and a rural school district contiguous thereto, such newly created district is a village school district. When a county board of education, under authority of Section 4736, G. C., has created a new school district from the territory of two contiguous village school

districts, each with a tax valuation of \$500,000 or more, such newly created district is a village district. Op. Atty. Gen. (1919), p. 869.

See Opinions of Attorney General, No. 2098 (1921), cited under Sec. 4692.

Village with less than five hundred thousand valuation not a village district.

Vote to organize village school district.

SECTION 4682. A village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than five hundred thousand dollars, shall not constitute a village school district, but the proposition to organize the territory thus formed into a village school district may be submitted by the board of education, and shall be submitted by the board of education upon the presentation to it of a written petition for such purpose signed by 25 per cent. of the electors of the territory thus formed, to a vote of the electors of the territory thus formed at any general or a special election called for that purpose, and be so determined by a majority vote of such electors.

HISTORY.—R. S. § 3888; 74 v. 140, § 4; 97 v. 335; 98 v. 217; 102 v. 37; 103 v. 545 (546).

A village school district once organized as such, and whose tax duplicate valuation falls below \$500,000, is not by that act alone dissolved and the board of education of such district will continue to perform the duties thereof. Op. Atty. Gen. (1917), p. 902.

When and how village school district may dissolve and join rural district.

SECTION 4682-1. A village school district containing a population of less than fifteen hundred may vote at a general or special election to dissolve and join any contiguous rural district. After approval by the county board such proposition shall be submitted to the electors by the village board of education on the petition of one-fourth of the electors of such village school district or the village board may submit the proposition on its own motion and the result shall be determined by a majority vote of such electors.

HISTORY.—103 v. 545 (546).

When a school district is dissolved under the provisions of Section 4682-1, G. C., the board of education of such district shall continue for the purpose of collecting moneys due said school district for tuition and otherwise and for the purpose of paying the debts of the said school district. Op. Atty. Gen. (1917), p. 484.

Upon the dissolution of a village school district under the provisions of this section the title to the school property of said district passes to and vests in the board of education of the contiguous rural school district to which such village school district is joined, but only the property within the limits of said village school district will be subject to a tax levy for the payment of any indebtedness incurred by the board of education of said village school district; and the board of education of said rural school district will have no authority in law to assume said indebtedness or to levy a tax to provide a fund for the payment thereof either upon the property within the limits of said village school district or upon the general duplicate of said rural school district. If the levy for the payment of said indebtedness has not been made by said board of education of said village at the time of dissolution, said village school district as a separate taxing district, and its board of education as its taxing authority, must continue for the purpose only of levying a tax for the payment of such indebtedness until such time as said indebtedness shall have been paid. Op. Atty. Gen. (1915), p. 554. Op. Atty. Gen. (1915), p. 1169.

When a township contains sixteen square miles, and a village is created out of said township, said village under the provisions of Section 4687, G. C., as amended in 104 O. L. 134, becomes a village school district separate and distinct from the township rural school district and the dissolution of said village school district and the union of said district with the contiguous township rural school district under the provisions of Section 4682-1, G. C., can be recognized only upon the proper action of the board of education of said village school district in compliance with the requirements of said section. No action on the part of the board of education of said rural district in connection with said dissolution and union is either authorized or required, and said board of education of said rural school district has no power to prevent such dissolution and union. After said village school district has been dissolved and joined to the contiguous township rural school district, neither said village nor the electors thereof have any authority in law to withdraw the territory within the corporate limits of said village from said township rural school district and re-establish said village school district. Op. Atty. Gen. (1915), p. 1160.

SECTION 4683. When a village school district is dissolved, the territory formerly constituting such village district shall become a part of the contiguous rural district which it votes to join in accordance with section 4682-1, and all school property shall pass to and become vested in the board of education of such rural school district.

Title passes to rural district board of education.

HISTORY.—R. S. § 3890; 70 v. 195, § 7; 97 v. 336; 104 v. 133.

SECTION 4684. Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of sections 4688 and 4688-1, and territory detached for school purposes, and including the territory attached to it for school purposes, shall constitute a county school district. In each case where any village or rural school district is situated in more than one county such district shall become a part of the county school district in which the greatest part of the territory of such village or rural district is situated.

County school district defined.

HISTORY.—R. S. § 3891; 70 v. 195, § 6; 97 v. 336; 104 v. 133.

A county school district as defined by Section 4684, General Code, is distinct from a county political subdivision of the state, and is not necessarily coextensive with the territorial limits of a county, but may contain within its limits territory of another county and exclude territory in the same county in which the larger part of its territory is situated.

The fact that in some instances the territorial limits of a county and a county school district may be the same, does not destroy the separate identity of the latter.

The members of a county board of education of a county school district are not county officers within the meaning of Section 1, Article X of the Constitution of Ohio. Cline v. Martin, 94 O. S. 420; Wogoman v. Board of Education, 95 O. S. 409; Cline v. Martin, 5 App. 90.

A county board of education has authority to dissolve two village school districts and consolidate them into one, in the absence of procedure on the part of said districts under Sections 4688 and 4686, General Code, which would exempt them from such action. Fisher v. Whittus, 6 App. 415.

Held under the provisions of this section, as amended in 104 O. L. 133, that there is no statutory authority for the transfer of



the territory of an exempted village school district to an adjoining rural school district. Op. Atty. Gen. (1917), p. 1300.

Under the provisions of this section a county school district is a political subdivision separate and distinct from the county, and bills for office supplies, stationery, etc., furnished to the county superintendent of schools should be approved by the county board of education and paid out of the county board of education fund on warrant of the county auditor. Op. Atty. Gen. (1915), p. 278.

Territory must  
be contiguous.

SECTION 4685. The territory included within the boundaries of a city, village or rural school district shall be contiguous except where an island or islands form an integral part of the district.

HISTORY.—R. S. § 5892; 70 v. 195, § 8; 97 v. 336; 104 v. 133.

Where by annexations of territory a rural school district is divided into three separate integral parts, the county board of education should transfer such territory so that it is contiguous to other territory of the district to which it belongs. Op. Atty. Gen. (1918), p. 12.

Two pieces of school territory which simply touch at a point as the apex of a triangle and the corner of a rectangle do not constitute contiguous territory as contemplated in sections 4685 and 4736, G. C. Op. Atty. Gen. (1917), p. 194.

#### ADVANCEMENT AND REDUCTION.

Change of  
classification  
upon advance-  
ment or reduc-  
tion.

SECTION 4686. When a village is advanced to a city, the village school district shall thereby become a city school district. When a city is reduced to a village, the city school district shall thereby become a village school district. The members of the board of education in village school districts that are advanced to city school districts, and in city school districts that are reduced to village school districts shall continue in office until succeeded by the members of the board of education of the new district, who shall be elected at the next succeeding annual election for school board members.

HISTORY.—R. S. § 3889; 70 v. 195, § 5; 97 v. 336; 98 v. 217.

Under the provisions of this section and of Section 4700, G. C., it was held that when a village school district by reason of the last federal census advances to the status of a city school district the members of the board of education of the old village school district shall decide the number of members which shall constitute the city board of education; and that the successors of the members of the board of education in such instance shall be elected at the next annual election for school board members.

Held further that a superintendent or teacher who has been elected for a legal term of years by said village board of education may hold for said term under the board of education of the city school district. Op. Atty. Gen. (1911), p. 516.

It has been held that where a village school district advances to the status of a city school district during a current school year the county certificates held by the teachers in the schools of such school district will be sufficient to carry teachers through said current year, but that for later periods a certificate must be obtained from the regularly appointed city board of school examiners. Op. Atty. Gen. (1911), p. 562.

Where a village advances to a city by reason of the last federal census, the board of education of the village continues its duties until the induction into office of the city board of education, but with the authority only of a village board of education. Such

village board, therefore, has the power only to appoint a superintendent for a period of three years as provided for villages in Section 7705, G. C., and an attempted appointment by such board of education of a superintendent for a longer term under the assumed authority of Section 7702, G. C., is void. *Op. Atty. Gen. (1911)*, p. 563.

The prosecuting attorney of the county in which the municipality is located is the legal adviser of the board of education of a municipality which has become a city by virtue of the proclamation of the Secretary of State, while that municipality is still functioning under the village form of government and has not yet elected city officials. *Op. Atty. Gen. No. 2054*, May 9, 1921.

SECTION 4687. Upon the creation of a village, it shall thereby become a village school district, as herein provided, and, if the territory of such village previous to its creation was included within the boundaries of a rural school district and such rural school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than 16 square miles. The legal title to school property for school purposes in such newly created village school districts shall be vested in the board of education of the newly created village school district. Provided, however, if there be any indebtedness on the school property located within the newly created village school district, the board of education of the newly created village school district shall assume such indebtedness and shall levy a tax annually sufficient to pay such indebtedness and shall pay to the board of education of the district or districts from which it acquired the school property, the amount of money collected from such levy as it becomes due.

School district in newly created village.

HISTORY. — R. S. § 3889; 70 v. 195, § 5; 97 v. 336; 98 v. 217; 104 v. 133; 109 v. 588.

Upon the incorporation of any part of the territory in a township rural school district into a village, the territory so incorporated automatically becomes a village school district, providing the valuation of the same for taxation is at least \$500,000. In case of such incorporation the title to school property held by the board of education of said rural school district in trust for the use and accommodation of the pupils of said rural school district, although located within the corporate limits of said village, will remain in the board of education of said rural school district. *Op. Atty. Gen. (1916)*, p. 629. (Section amended since opinion rendered.)

When a village school district is created in a rural school district, which rural school district has less than 16 square miles of territory, the territory outside of the village is annexed to such village school district for school purposes, and although the territory of a newly created village district, together with the territory annexed to it for school purposes, may be the same as that which was originally a rural school district, yet there is a new district, and a new board of education should be elected.

Held further that in such newly created village school district a special election may be held for the members of the board of education. *Op. Atty. Gen. (1917)*, p. 1898.

When a newly created village includes within its corporate limits a school building which was originally owned by the township school district, the title to said property remains vested in the township district and may be transferred by a warranty deed at any time agreed upon by the several boards of education; the village board of education entering into an agreement to reimburse the

township school district for the payment of bonds issued for the erection of said school building, as a consideration for said transfer. Op. Atty. Gen. (1919), p. 1626. (Section amended since opinion rendered.)

What school districts may become exempt from county supervision.

SECTION 4688. The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. Such village school district by notifying the county board of education of such decision before May first in any year, shall be exempt from the supervision of the county board of education for the following school year which begins September first thereafter. The village once so exempted shall be styled an exempted village school district and shall remain so until the board of education thereof by a majority vote of the full membership determines that it desires to be supervised by the county board of education and notifies the county board of education on or before May first in any year to that effect.

HISTORY.—R. S. § 3889; 70 v. 195 § 5; 97 v. 336; 98 v. 217; 103 v. 267; 104 v. 133; 108 v. Pt. I. 704; 109 v. 552.

Held that a superintendent of schools of a village school district which is exempted under the provisions of Section 4688, G. C., 104 O. L. 133, is not eligible to appointment as a member of the county board of school examiners. Op. Atty. Gen. (1916), p. 1423.

See Opinions of Attorney General, No. 2234 (1921), cited under Sec. 7691.

When a census of the village district may be taken; return; notice.

SECTION 4688-1. The board of education of a village school district shall, upon the petition of one hundred or more electors of such district, or upon its own motion, duly passed by a majority vote of the entire board, order a census to be taken of the population of such district. One or more persons may be appointed by the board to take such census. Each person so appointed shall take an oath or affirmation to take such census accurately. He shall make his return under oath to the clerk of the board, and certified copies of such return shall be sent to the county auditor and superintendent of public instruction. If the census shows a population of three thousand or more in the village school district, and such census is approved by the superintendent of public instruction, such district shall be exempted from the supervision of the county board of education after due notice is given as is provided in section 4688.

HISTORY.—104 v. 133 (134); 108 v. Pt. I 704. The legislature gave this section number to § 4688-3 in 107 v. 556, but it was changed by the attorney general.

Village district exempt from county supervision ineligible to certain state aid.

SECTION 4688-2. All village school districts which are exempted from the supervision of the county board of education as provided in sections 4688 and 4688-1 are thereby rendered ineligible to receive state aid for purposes of



supervision and teacher training courses and for the grading of schools as provided in section 7655-5 of the General Code.

HISTORY.—104 v. 133 (134).

SECTION 4688-3. The board of education of any village or rural school district, separated by water from the mainland of the county to which it belongs, may decide by a majority vote of the full membership thereof not to continue as a part of a supervision district of such county. Such district, by notifying the county board of education of such action before June 1st of any year, shall be exempt from any supervision district of the county and shall be a separate district under the supervision of the county superintendent. Such district shall continue to be under the direct supervision of the county superintendent until the board of education of such district by resolution, filed with the county board of education, shall petition to become a part of a supervision district of the county school district. And such village or rural school district shall not be liable for any part of the cost and expense due to district supervision, so long as it does not petition to become a part of a supervision district. Such district shall employ a superintendent who shall perform all the duties prescribed by law for a district superintendent, but shall teach such parts of each day as such board shall require. The salary of such superintendent shall be paid by such board.

District separated from mainland may withdraw from supervision district and be under county supervision.

HISTORY.—107 v. 556. The legislature numbered this § 4688-1 in 107 v. 556, but it was changed by the attorney general to § 4688-3.

SECTION 4689. The provisions of law relating to the power to settle claims, dispose of property or levy and collect taxes to pay existing obligations of a village that has surrendered its corporate powers, shall also apply to such village school district and the board of education thereof.

Disposal of property in such cases.

HISTORY.—R. S. § 3889; 70 v. 195, § 5; 97 v. 336; 98 v. 217; 104 v. 133 (134).

By reason of the provisions of this section which applies the provisions of Section 3514, G. C., to the school districts which have been dissolved in the manner provided by law, it is held that where a school district is dissolved under the provisions of Section 4682-1, G. C., the board of education of such school district retains its identity for the purpose of collecting moneys due said dissolved school district and for the purpose of paying the debts thereof. Op. Atty. Gen. (1917), p. 484.

SECTION 4690. When territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city or village school district. Provided, however, if there be any indebtedness on the school property in the territory annexed, the board of education of the city or village school district, shall assume such indebtedness and shall levy a tax annually sufficient to pay such indebtedness and shall pay to the board of

Title to property when territory annexed to city or village.

education of the school district or districts from which such territory was detached, the amount of money collected from such levy as it becomes due.

HISTORY.—R. S. § 3893; 70 v. 195, § 40; 89 v. 68; 90 v. 126; 91 v. 307; 95 v. 150; 97 v. 336; 99 v. 117; 104 v. 133; 109 v. 588.

Transfer of  
part or all  
of one district  
to another;  
procedure.

SECTION 4692. The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall, within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer. If an entire district be transferred the board of education of such district is thereby abolished or if a member of the board of education lives in a part of a school district transferred the member becomes a non-resident of the school district from which he was transferred and ceases to be a member of such board of education. The legal title of the property of the board of education shall become vested in the board of education of the school district to which such territory is transferred. The county board of education is authorized to make an equitable division of the school funds of the transferred territory either in the treasury or in the course of collection. And also an equitable division of the indebtedness of the transferred territory.

Legal title to  
property; divi-  
sion of school  
funds.

HISTORY.—R. S. § 3894; 70 v. 195, § 155; 95 v. 54; 97 v. 336; 104 v. 133 (135); 106 v. 396.

The provision contained in Section 4692, General Code, as amended 106 O. L. 397, relating to the transfer of territory by a board of education, by which it is enacted that the legal title shall become vested in the board of education of the school district to which it is transferred, contravenes no constitutional provision and is a valid and constitutional enactment. Board of Education v. Hoover, 13 App. 346.

Where territory has been transferred to a village school district by the county board of education, under the provisions of 4692 G. C., the electors residing in such territory are thereafter residents of the village school district and can take no part in a school election held in the rural school district from which they were transferred.

Where territory has been attached to a village school district by the county board of education, such territory remains a part of such village school district until proper action has been taken by the county board of education, taking such territory from the village school district. Op. Atty. Gen. No. 2098, May 24, 1921.

In a proceeding in which the validity of a transfer of one school district to another is questioned, parol evidence is admissible to show that proper notices had been posted as provided for in Section 4692, General Code.

The transfer of a school district under the provisions of Section 4692, General Code, is not invalidated because of the failure to make a contemporaneous distribution of the funds and indebtedness of the transferred district.

The transfer of a village school district to a township centralized school district within three years after the centralization of the township district has no decentralizing effect on the schools and is not a violation of Section 4727, General Code, prohibiting centralization to be discontinued within three years. *State, ex rel., v. Hall*, 13 App. 350.

Where it is desired to transfer certain territory from one school district to another school district in the same county school district and within the jurisdiction of the same county board of education, the provisions of section 4692 G. C. apply. There is no provision in section 4692 G. C. for any petition on the part of the electors, the only provision in such section being that a remonstrance and not a petition can be filed with the county board of education. *Op. Atty. Gen. No. 3015*, April 21, 1922.

The provision of Section 4692, General Code, as amended in 106 O. L. 397, rendering ineffective the order of a county board of education transferring territory from one district to another, upon the filing of a remonstrance by a majority of the qualified electors residing in the territory to be transferred, has reference only to transfers within the county school district and has no application to a proceeding to transfer territory of an adjoining county district under the provisions of Section 4696, General Code, 106 O. L. 397. *Board of Education v. DeTray*, 95 O. S. 124.

Held, that this section does not authorize the transfer of uninhabited territory from one school district to another for the purpose of equalizing tax valuations in such districts. *Mathews v. Board of Education*, 8 App. 206.

The county board of education has authority to transfer territory from a rural to a village school district, and in the absence of fraud or gross abuse of discretion, the courts cannot control or interfere with the exercise of such discretion. *Wogoman v. Board of Education*, 5 App. 380, 95 O. S. 409.

For history of legislation as to the transfer of school districts or of the territory forming parts thereof, see *State v. Board of Education*, 19 N. P. (N. S.) 88.

For decisions construing former statutes relating to this subject, see: *Scott v. McCullough*, 72 O. S. 538; *Board of Education v. Board of Education*, 46 O. S. 595.

Where a village school district is transferred to an adjacent township rural school district under the authority of this section of the General Code, an agreement between the county board of education and the board of education of the village school district that the taxable property of the township rural school district shall be exempt from payment of taxes to pay the existing and outstanding indebtedness of said village school district so transferred, is without authority of law; and tax levies for the payment of the indebtedness of said village school district should be extended on all the taxable property of said township rural school district as enlarged by said transfer. *Ewing v. Schopf*, 11 App. 379, 30 O. C. A. 63.

Where an entire school district is transferred to an adjoining school district, the bonded indebtedness of the district transferred becomes the debt of the whole district as it exists after the transfer is made; and the board of education of the district as it exists after the transfer is made must provide for all indebtedness by making tax levies upon all taxable real and personal property in the district as it exists after the transfer is made.

Should the district transferred be the owner and holder of any school property at the time the transfer is made, the property so held passes to the district as it exists after the transfer is made. *Op. Atty. Gen. (1917)*, p. 859.

Sections 4692 and 4736, G. C., provide for two separate and distinct matters, one for the transfer of territory, the other for the arranging of school districts. The provisions of this section are



separate and distinct and the provisions of neither are in any way modified or controlled by those of the other. Op. Atty. Gen. (1917), p. 1104.

No particular form is provided by the school laws for the division of funds in process of collection when territory is transferred from one school district to another, and an order from the county board of education which instructs the county auditor to pay over to the transferred district all school moneys derived for school purposes from said territory on semi-annual distribution is sufficient. Op. Atty. Gen. (1918), p. 1247.

The filing of a petition with the county board of education signed by 75 per cent. of the electors in territory which it is desired to have transferred from one rural school district to another in the same county school district, is not authorized by Section 4692, G. C., under which section transfers in the same county school district are to be made. Op. Atty. Gen. (1919), p. 396.

Under Section 4692, G. C., where a county board of education transfers territory from one school district to another, and a map has been properly filed with the auditor of the county, that official is required by law to transfer the territory for taxing purposes at the time of such transfer regardless of any listing day. Op. Atty. Gen. (1919), p. 795.

A county board of education has a legal right under Section 4692, G. C., to transfer all of a school district, or part of it, to an adjoining village or rural school district, and a remonstrance filed later than 30 days after the filing of the map with the county auditor, fails.

Under Section 4692, G. C., the county board of education, by its discretion, can make a transfer of territory from one school district to another at any time it decides it is necessary, but new school districts are created under Section 4736, G. C., and not under Section 4692. Op. Atty. Gen. (1919), p. 1119.

Under Section 4727, G. C., as amended in 108 O. L., Part I, 235, a county board of education may under the authority of Section 4692, G. C., transfer territory to or from a centralized school district upon the petition of two-thirds of the qualified electors of the territory to be transferred, but the provisions of said Section 4727, G. C., as amended are not mandatory in this respect and the county board of education is not required to transfer territory from one school district to another in such county school district, although a petition therefor is filed. Op. Atty. Gen. (1919), p. 1195.

If the electors of a school district vote in favor of a bond issue under authority of Section 7625, G. C., and for the purposes therein mentioned, and thereafter the county board of education transfers a part or all of another school district to such district, upon said transfer being effected, said territory thus transferred will become a part of said school district for all school purposes and will therefore be liable for its share of the bonded indebtedness so created. Op. Atty. Gen. (1915), p. 2456.

In transferring territory from one school district to another within the county school district under authority of Section 4692, G. C., as amended in 106 O. L. 397, it is the duty of the county board of education at the time of making said transfer to make an equitable division of the indebtedness of the school district from which said territory is transferred; and that part of said indebtedness which said board, in the exercise of its discretion determines shall be assumed by the school district to which said territory is transferred, will become an indebtedness of the entire district thus formed, and not merely an indebtedness of the territory transferred.

In case the school district to which said territory is transferred votes in favor of a bond issue under authority of Section 7625, G. C., for purposes therein mentioned, and territory is thereafter transferred by the county board of education to said school district, said territory so transferred will be liable for its share of the bonded indebtedness created. Op. Atty. Gen. (1915), p. 1970.

Where territory is transferred by the county board of education, pursuant to Section 4692, G. C., 106 O. L. 397, the ten days'

notice therein required is jurisdictional and the same must therefore be given as required.

Where transfer of territory is made by the county board of education, pursuant to Section 4692, G. C., and the indebtedness of the territory is divided by the board of education as therein authorized, it then becomes the duty of the board of education of the district to which such territory is transferred to levy taxes to pay the indebtedness so apportioned to it. Op. Atty. Gen. (1916), p. 1005.

The filing with the board of education of a county school district of the remonstrance provided for in Section 4692, G. C., three days before the filing of the map with the county auditor, as herein provided, showing the boundaries of the territory proposed to be transferred by said county board of education, is a sufficient compliance with the provisions of said statute relating to the filing of said remonstrance.

Any one of the electors who resides in the territory proposed to be transferred, and who has signed said remonstrance has the right to withdraw his name from said remonstrance at any time before the expiration of the thirty day period provided for in said section. Op. Atty. Gen. (1916), p. 582.

An issue of bonds by the board of education of a school district does not become an indebtedness of said district within the meaning of the latter part of Section 4692, G. C., until said bonds are actually sold and in the process of delivery. Op. Atty. Gen. (1916), p. 847.

Title to school property situated in transferred territory vests in the board of education to which such territory is transferred, upon the completion of such transfer. Op. Atty. Gen. (1920), p. 67.

Under the provisions of G. C. Sec. 4692, warranty deeds for real estate used for school purposes and belonging to the board of education from which territory was transferred, need not be given to the board of education accepting such territory or school property, as title to real estate automatically passes upon completion of the transfer. Op. Atty. Gen. (1920), p. 67.

Transferred property may be sold by the board of education of the school district to which such territory was transferred, but such real or personal property to be sold must be offered in the manner provided in G. C. Sec. 4756. Op. Atty. Gen. (1920), p. 67.

The provision contained in Section 4692, General Code, as amended 106 O. L. 397, relating to the transfer of territory by a board of education, by which it is enacted that the legal title to school property transferred shall become vested in the board of education of the school district to which it is transferred, contravenes no constitutional provision and is a valid and constitutional enactment. Board of Education v. Hoover, 13 App. 346.

In a proceeding in which the validity of a transfer of one school district to another is questioned, parol evidence is admissible to show that proper notices had been posted as provided for in Section 4692, General Code.

The transfer of a school district under the provisions of Section 4692, General Code, is not invalidated because of the failure to make a contemporaneous distribution of the funds and indebtedness of the transferred district.

The transfer of a village school district to a township centralized school district within three years after the centralization of the township district has no decentralizing effect on the school and is not a violation of Section 4727, General Code, prohibiting centralization to be discontinued within three years. State ex rel. v. Hall, 13 App. 350.

The authority of a board of education of a county school district to transfer territory from one local district to another within such county school district is under provision of Section 4692, G. C., as amended in 106 O. L. 397, while the transfer of territory from one county school district to another is provided for in Section 4696, G. C., as amended in 106 O. L. 397. Op. Atty. Gen. (1916), p. 399.

Where a county board of education, acting under the pro-  
8 S. L.

visions of Section 4692, G. C., abolishes a village school district by transferring the same to another village school district, bonded or other indebtedness of such abolished school district becomes a charge upon the school district to which it is transferred, and may be paid by a levy of taxes on all the taxable property of the latter district as enlarged by the transfer.

The equitable division of the school funds and of the indebtedness which the county board of education under Section 4692, G. C., is authorized to make in the transfer of territory from one school district to another is not a matter jurisdictional to the power of the county board of education to make such transfer of territory; and such equitable division of funds and indebtedness may be made at a meeting later than the one at which the transfer is made.

There is no right of appeal from an order of the county board of education making such division of school funds and indebtedness, but such order may be reviewed by original action in the court of common pleas on the petition of the board of education of either school district affected by such order, if the county board of education has been guilty of fraud or gross and intentional abuse of discretion in making such order. Op. Atty. Gen. (1917), p. 359.

Transfer of  
part or all of  
school district  
to another.

SECTION 4696. A county board of education may, upon petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district.

Procedure;  
transfer of di-  
vision of  
funds and  
indebtedness.

In any case before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be, (2) an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred, and (3) a map shall be filed with the county auditor of each county affected by the transfer. When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory is transferred.

HISTORY.—R. S. § 3896; 70 v. 195, § 157; 97 v. 337; 104 v. 133; 106 v. 396; 108 v. Pt. I. 704; 109 v. 65.

Where the respective county boards of education are unable to agree with respect to the division of funds for indebtedness in the case of a transfer of territory from one county school district to another, the court has no authority to act in the premises. Board of Education v. Board of Education. 19 N. P. (N. S.) 398.

Held, that the right of remonstrance provided for in Section 4692, General Code (106 O. L. 397), has no application to proceedings by the county board of education for the transfer of territory from one county school district to another under the provisions of Section 4696, General Code, (106 O. L. 397). Board of Education v. DeTray, 95 O. S. 124.

Held that Section 4696, G. C., 106 O. L. 397, does not authorize a county board of education to transfer territory to a village



school district other than an exempted village school district. Op. Atty. Gen. (1916), p. 1005.

The legal title to school property located in territory transferred by a county board of education to an adjoining exempted village school district or city school district, or to a school district in another county school district, becomes vested in the board of education of the school district to which such territory is transferred. Op. Atty. Gen. (1919), p. 195.

Where a school district as a whole is transferred and added to an exempted village school district such territory becomes an integral part of such enlarged district, and then and thereafter taxes in such enlarged district must be spread uniformly over the whole of such enlarged district, and the board of education of such enlarged exempted village district takes the funds and assumes the indebtedness of the transferred district existing at the time of the transfer. Op. Atty. Gen. (1919), p. 753.

A county board of education is a creature of statute, and the exercise of the powers granted to it is limited to those expressly given and those contained by reasonable intentment in the act creating it.

A county board of education is not authorized to transfer vacant property, its power in this respect being limited to inhabited property. Mathews v. Board of Education. 8 App. 206.

Where it is desired to transfer school territory under section 4696 G. C. and such school territory is taken from more than one school district, a petition (required for a mandatory transfer of such school territory) should be presented from each school district and must contain at least seventy-five per cent. of the electors in each school district residing in the territory proposed to be transferred. Op. Atty. Gen. No. 2917, Mar. 9, 1922.

Under the provisions of section 4696 G. C., for a county board of education to accept a transfer of territory from an exempted village school district, such transfer must be petitioned for by a majority of the electors residing in the territory to be transferred, and a resolution of the board of education of the exempted village district concerned, offering to yield such territory, is not sufficient basis for the county board of education's acceptance.

Under the provisions of section 4696 G. C., in order to make it obligatory for the county board of education to accept a transfer of school territory from an exempted village school district or a city school district, or another county school district, the petition presented from the school territory to be transferred must contain the signatures of seventy-five percent of the electors residing in such school territory. Op. Atty. Gen. No. 2432, Sept. 21, 1921.

A village school district that is situated in two different counties, and which is a part of the county school district in which the greater part of the territory comprising the village district is situated, may be transferred from the county school district, of which it is a part, to an adjoining county school district, under the provisions of section 4696 G. C. Op. Atty. Gen. No. 3234, June 17, 1922.

**SECTION 4696-I.** When territory located within the corporate limits of a city or of a village wherein has been constituted an exempted village school district, is attached for school purposes to a school district of an adjacent city or exempted village school district, such territory or any part thereof may be transferred to the school district of the municipality in which said territory is located as follows: a petition requesting such transfer, signed by at least fifty per cent. of the qualified electors residing in the territory sought to be transferred, and accompanied by a correct map of said territory, shall be filed with the clerks of the boards of education interested. Each board may, by resolution, consent to such transfer. The passage of such

Transfer of  
portion of city  
or exempted  
village district  
to another;  
procedure.

resolution shall require a majority vote of the full membership of the board by aye and nay vote, and record thereof shall be duly entered on the record of such boards of education respectively; provided, however, that such transfer shall not take effect until a map showing the boundaries of the territory transferred is placed upon the records of such boards, and copies of said resolutions, certified by the respective presidents and clerks of each board, together with a copy of said map are filed with the auditor of the county in which said transferred territory is situated; and provided further that such transfer shall not take effect until an equitable division of the funds on hand and in the process of collection, and the indebtedness if any of the boards of education of the school district from which said territory is being detached, be decided upon and made by the boards of education interested. If such boards of education fail or refuse to transfer such territory by mutual consent, and fail to make said equitable division of said funds and indebtedness as hereinbefore provided within sixty days from the filing of said petitions and map, said petitioners shall file a copy of said petition and map in the probate court of the county in which the territory is situated. The petitioners shall give satisfactory security for costs in the sum of \$100.00, conditioned that they shall pay all costs in the event the transfer is not granted.

HISTORY.—109 v. 175.

Notice and  
hearing.

SECTION 4696-2. Thereupon the probate judge shall fix a day for the hearing of the petition and cause to be published for four consecutive weeks in two newspapers of opposite politics printed and of general circulation in the county, a notice of the filing of the petition and of the time of the hearing. He shall also notify the clerks of the boards of education interested, of the filing of the petition and the time of hearing.

HISTORY.—109 v. 176.

Judgment  
final division  
of funds.

SECTION 4696-3. The probate judge shall hear and determine the case and give judgment for or against such transfer, and his judgment shall be final. In case the finding is against the transfer, judgment shall be rendered against the petitioners for the costs of the proceedings. If the finding is for the transfer, judgment shall be rendered against each of the boards of education interested for one-half of the costs, or if more than two boards are interested, judgment shall be rendered against each for its equal proportionate share of the costs. If the finding is for the transfer, the probate judge shall determine and order an equitable division of the funds on hand and in the process of collection and the indebtedness, if any, of the board of education of the school district from which said territory is being detached. A certified copy of the findings of the court, together with a copy of the map of the territory transferred shall be filed by the probate judge in the office of the county auditor.

HISTORY.—109 v. 176.

## CHAPTER 6

### CITY SCHOOL DISTRICT

#### SECTION

4698. Board of education in districts of less than 50,000 population; in districts of more than 50,000 and less than 150,000; in districts of more than 150,000 population.
4699. Boards to conform to the law within 30 days; districts having population of more than 50,000 but less than 150,000 to be subdivided for purpose of election of board members.
4701. Provision with respect to election in 1921 to conform to last federal census; when excess members to be retired by lot.

#### SECTION

4702. Terms of members of board; provision as to time of election.
4703. Electors in territory attached for school purposes entitled to vote.
4704. Submission to electors of question of number of members of board; appointment of commission to frame plan of organization for submission.
4705. When and how plans shall be submitted and for what they shall provide.
4706. Expense of election on submission of question.
4707. Adoption of by majority vote; expiration of terms.

SECTION 4698. In city school districts containing according to the last federal census a population of less than 50,000 persons, the board of education shall consist of not less than three members nor more than five members elected at large by the qualified electors of such district.

Board in districts less than 50,000 population.

In city school districts containing according to the last federal census a population of 50,000 persons or more, but less than 150,000 persons, the board of education shall consist of not less than two members nor more than seven members elected at large or not less than two members nor more than seven members elected at large and not more than two members elected from subdistricts by the qualified electors of their respective subdistricts. The office of subdistrict member in boards of education in all such city school districts having more than two subdistrict members is hereby abolished and the terms of members elected from such subdistricts shall terminate on the day preceding the first Monday in January, 1920.

In districts more than 50,000 and less than 150,000.

In city school districts containing according to the last federal census a population of 150,000 persons or more, the board of education shall consist of not less than five nor more than seven members elected at large by the qualified electors of such district; the office of subdistrict member in boards of education in all such city school districts is hereby abolished and the terms of members elected from subdistricts shall terminate on the day preceding the first Monday in January, 1920.

In districts more than 150,000.

HISTORY.—R. S. § 3897; 70 v. 195, §§ 9, 10; 77 v. 80; 82 v. 7; 84 v. 184; 91 v. 289; 92 v. 149; 97 v. 338; 103 v. 275; 108 v. Pt. I 192.

The Jung small school board act as found in Sections 4698 to 4707, General Code, inclusive, is a valid exercise of legislative power agreeable to the constitution of Ohio. State ex rel. v. Evans, 90 O. S. 243.

For a construction and application of this and subsequent sections of the General Code relating to city school districts, in case of a disputed election of members of a city board of education, see State ex rel. v. Strawburg, 96 O. S. 576.



In passing from one class or kind of city school district to a different one, when, after the official announcement of the census of the district, it becomes known that a change of status of the district has been produced by a change in population, city boards of education must conform to and apply the law found in G. C. Secs. 4698, 4699, 4701 and 4702. Op. Atty. Gen. (1920), p. 879.

A city board of education consisting of seven members elected at large, in pursuance to the provisions of sections 4698 et seq., G. C., as amended in 1919, constitutes a legal board for a city school district, the population of which is more than fifty thousand and less than one hundred and fifty thousand. Such a board also conforms to the provisions of said sections relative to a board required for a city school district containing a population of more than one hundred fifty thousand. In the event that the district containing the lesser population passes the one hundred fifty thousand mark in population, this fact will not change the status of such a board, and members so elected will have a legal tenure of office, notwithstanding the change in population. Op. Atty. Gen., No. 1868, Feb. 21, 1921.

Boards must conform to the law within 30 days; resolution.

SECTION 4699. Within thirty days after this act shall take effect, the board of education of each and every city school district in which the number of members does not conform to the provisions of section 4698 shall by resolution determine within the limits prescribed by said sections the number of members of said board of education. Said resolution shall provide for the classification of the terms of members so that they will conform to the provisions of section 4702, General Code, taking into consideration the terms of office of the existing members whose terms do not expire or terminate on the day preceding the first Monday in January, 1920.

Division into subdistricts; numbering.

At the same time such boards of education in city school districts containing according to the federal census a population of 50,000 persons or over, but less than 150,000 persons, and electing to have subdistricts, shall subdivide such city school district into subdivisions equal in number to the number of members of the board of education in the district, who are to be elected from subdistricts therein so established. Such subdistricts shall be bounded, as far as practicable, by corporation lines, streets, alleys, avenues, public grounds, canals, watercourses, ward boundaries, voting precinct boundaries, or present school district boundaries, and shall be as nearly equal in population as possible and be composed of adjacent and as compact territory as practicable. Such subdivision shall be numbered from one up consecutively and the lines thereof so fixed shall not be changed until after each succeeding federal census. Within three months after the official announcement of the result of each succeeding federal census, the board of education of each city school district which according to such census shall have a population of 50,000 persons or over and less than 150,000 persons, and shall elect to have subdistricts, shall redistrict such district into subdistricts in accordance with the provisions of this chapter. If the board of education of any such district fails to district or redistrict such city school district, as herein required then

the state superintendent of public instruction shall forthwith district or redistrict such city school district, subject to the requirements of this chapter.

HISTORY.—R. S. § 3897; 70 v. 195, §§ 9, 10; 77 v. 80; 82 v. 7; 84 v. 184; 91 v. 289; 92 v. 149; 97 v. 338; 103 v. 275; 108 v. Pt. I 192 (193).

SECTION 4701. Whenever the number of members of the board of education of a city school district is so fixed in the resolution provided for in section 4699, that the number of members of said board to be elected in the year 1921 in order to comply with the provisions of section 4702, exceeds the number of members whose terms expire on the day preceding the first Monday in January, 1922, such excess number of members of such school board shall be elected at the general school election in the year 1919 for such terms of two years necessary to comply with the provisions of sections 4698 and 4702.

Election provision in view of federal census.

Whenever the number of members of any such board of education is so fixed as provided in this act, that the number of members of said board to be elected in the year 1921, in order to comply with the provisions of section 4702, is less than the number of members whose terms expire or terminate on the day preceding the first Monday in January, 1922, the member or members to retire, so that there will be a compliance with sections 4698 and 4702, shall be determined by lot from among those whose terms would expire on the day preceding the first Monday in January, 1922, the terms of office of those on whom the lot falls shall expire on the day preceding the first Monday in January, 1920.

When excess of members to be retired by lot.

HISTORY.—R. S. § 3897; 70 v. 195, §§ 9, 10; 77 v. 80; 82 v. 7; 84 v. 184; 91 v. 289; 92 v. 149; 97 v. 338; 103 v. 275 (276); 108 v. Pt. I 192 (194).

SECTION 4702. The term of office of all members of boards of education in city school districts, except as provided in section 4701, shall be four years. All members in office at the time this act takes effect shall serve the unexpired portions of the terms for which they were respectively elected and until their successors are elected and qualified, unless their terms shall expire or shall have been terminated as provided by sections 4698 and 4701.

Term.

If the number of members of a board of education of any city school district to be elected at large as fixed pursuant to section 4699 be even, one-half thereof shall be elected in the year preceding, and the remaining half in the year following the calendar year divisible by four. If such number be odd, one-half of the remainder after diminishing the number by one shall be elected in the year preceding, and the remaining number shall be elected in the year following the calendar year divisible by four. All members to be elected from odd numbered subdistricts shall be elected at one and the same election, and all members from even numbered subdistricts shall be elected at the alternate election.

When members elected.

HISTORY.—R. S. § 3897; 70 v. 195, §§ 9, 10; 77 v. 80; 82 v. 7; 84 v. 184; 91 v. 289; 92 v. 149; 97 v. 338; 103 v. 275 (277).

Where under the Jung act amending the above and following sections of the General Code relating to boards of education in cities, it was provided that members of existing boards of education should hold over until the end of their respective terms, and three members in a city school district held until the day preceding the first Monday in January, 1916, it was held that their successors were properly elected for the term of four years. Held further that the provisions of Section 4702, G. C., directing that if the number of members of a city board of education be odd, one-half of the remainder, after diminishing the number by one shall be elected in the year preceding and that the remaining number shall be elected in the year following the calendar year divisible by four, is not mandatory but is directory only. Op. Atty. Gen. (1917), p. 1820.

Where there is a failure to elect a member of a board of education for the short term under the provisions of the Jung small school board law of 1913, no such election can be had for such short term thereafter.

In case there is no election for a member of the board of education, the old member will hold over for the full term of four years.

Where the present members of a board of education, whose terms do not expire, are candidates for re-election but do not receive sufficient votes to be elected, the fact that they were candidates can make no difference in the election of those persons who were properly elected. Op. Atty. Gen. (1918), p. 39.

Electors in attached territory entitled to vote.

SECTION 4703. When territory is attached to a city school district for school purposes, the electors residing in said attached territory shall be entitled to vote for school officers and on all school questions in said district. It shall be the duty of the board of education of such city school district to assign such territory to the adjoining election precinct or precincts of said district and to have a map prepared showing such assignment, which shall be made a part of the records of said board. The electors residing in such attached territory shall be entitled to vote in the precincts to which they are assigned, but in case no assignment is made by the board of education, each elector shall vote in the precinct nearest his residence.

An elector residing in a city but not in the city school district of said city shall not be entitled to vote in said city school district.

HISTORY.—R. S. § 3897; 70 v. 195, §§ 9, 10; 77 v. 80; 82 v. 7; 84 v. 184; 91 v. 289; 92 v. 149; 97 v. 328; 103 v. 275 (277).

Submission of question of number of members.

SECTION 4704. If, at any time, a petition signed by ten (10%) per cent. of the electors in any district shall be filed with the clerk of the board of education of such district asking that the question what shall be the number of members and what [shall be] the organization of the board of education of such district be submitted to the electors thereof, such board of education shall within thirty days after the filing of such petition provide by resolution for submitting such question to the electors of such district. Such question shall not be submitted to a referendum vote more than once in any period of four years and the percentage of electors required to sign such petition shall be based upon the total vote cast at the last preceding general school election.



Said resolution shall require that such question shall be submitted at the next regular school election and shall also provide for the appointment of a commission to frame two or more plans of organization for submission as above provided. Said commission shall consist of seven members, three of whom shall be appointed by the president of the board of education of such district, two by the mayor of the city in which such district is embraced and two by the president of the board of sinking fund trustees of such city.

Commission to frame plans of organization for submission.

A certified copy of said resolution shall immediately after its passage be transmitted to the mayor and president of the board of sinking fund trustees of said city and such commission shall be appointed and shall organize within sixty days after the passage of said resolution.

HISTORY.—R. S. § 3897; 70 v. 195, §§ 9, 10; 77 v. 80; 82 v. 7; 84 v. 184; 91 v. 289; 92 v. 149; 97 v. 338; 103 v. 275 (277).

SECTION 4705. Said commission shall prepare and submit to the electors at the next general school election, if one occur not less than one hundred and twenty days after the passage of said resolution, otherwise, at the second general school election, two or more plans for the organization of the board of education in such district, but in no event shall less than two plans be submitted. Each plan shall provide for the number of members, the length of term of the members and the organization of the board; one plan so submitted shall provide for a board of the same number and of the same organization as the board existing in said district at the time of said election. Said plans shall be submitted to the electors of said district on a separate ballot, bearing no party designation and in such form as said commission may determine. A certified copy of the resolution determining such form shall be transmitted by said commission to the proper election authorities a sufficient length of time prior to said election to enable the ballot therefor to be prepared.

When and how plans shall be submitted and for what they shall provide.

HISTORY.—R. S. § 3897; 70 v. 195, §§ 9, 10; 77 v. 80; 82 v. 7; 84 v. 184; 91 v. 289; 92 v. 149; 97 v. 338; 103 v. 275 (278).

SECTION 4706. Provision shall be made by the board of deputy state supervisors and inspectors of election or other board or officer having charge of elections within any district for the preparation of the ballots for the holding of said election as hereinbefore provided and said election shall be conducted in all respects not herein specifically provided for, in a manner prescribed by general law for school elections.

Election; expense.

The board of education of such district shall make such provision as is necessary for meeting the expense of said commission, but said commissioners shall receive no compensation.

HISTORY.—R. S. § 3898; 70 v. 195, § 11; 81 v. 72; 84 v. 185; 91 v. 69; 92 v. 424; 97 v. 340; 103 v. 275 (278).

Adoption of by  
majority vote.

SECTION 4707. If any plan so submitted shall receive a majority of the number of votes cast for all of the plans, it shall thereafter become the law governing the number of members and the organization of the board of education in such district and at the next general school election following the adoption of such plan all of the members of the board of education of such district shall be elected pursuant to such plan.

Expiration of  
terms.

The terms of all members of the board of education of such district who may have been elected prior to the adoption of such plan, or who may be elected at the general school election at which such plan is adopted, shall expire on the day preceding the first Monday of January following the next general school election thereafter. All members elected at said general school election following the adoption of such plan shall take office on the first Monday of January next following their election and shall hold office during such term or terms as may be provided by such plan adopted by the electors of said district, but no terms shall be for less than two years.

HISTORY.—R. S. § 3600; 70 v. 195, §§ 10, 11; 97 v. 341; 103 v. 275 (278).

## CHAPTER 7

### VILLAGE SCHOOL DISTRICTS

#### SECTION

3514. Rights and liabilities not affected.
4708. Board of education in village districts and in exempted village school districts; when elected.
4709. Terms of members.

#### SECTION

4710. Election in newly created village; appointment of board by county commissioners on failure to elect.
4711. Electors residing in territory attached to village school district for school purposes; how assigned for voting purposes.

SECTION 3514. Such surrender of corporate powers shall not affect vested rights or accrued liabilities of such village, or the power to settle claims, dispose of property, or levy and collect taxes to pay existing obligations, but after the presentation of such petition, council shall not create any new liability until the result of the election is declared, nor thereafter, if such result is in favor of the surrender of corporate powers. Due and unpaid taxes may thereafter be collected, and all moneys or property remaining after such surrender shall belong to the school district embracing such village.

Rights and liabilities not affected.

HISTORY.—96 v. 21, § 4; R. S. Bates, § 1536-4. For analogous sections, see R. S. §§ 1633 to 1647.

SECTION 4708. In exempted village school districts and in village school districts, each board of education shall consist of five members elected at large at the same time as municipal officers are elected and in the manner provided by law.

Board of education in exempted and village districts.

HISTORY.—R. S. § 3908; 75 v. 53; 88 v. 494; 91 v. 121; 97 v. 341; 109 v.

552. In a newly created village school district a special election may be held for members of the board of education of such school district.

Although the territory of the newly created village district, together with the territory annexed to it for school purposes, may be the same as that which was originally a rural school district, yet there is a new school district and a new board of education should be elected. Op. Atty. Gen. (1917), p. 1898.

SECTION 4709. At the first election in such district, a board of education shall be elected, two members to serve for two years and three to serve for four years. At the proper municipal election held thereafter, their successors shall be elected for a term of four years.

Terms of members chosen at first election.

HISTORY.—R. S. § 3908; 75 v. 53, § 18; 88 v. 491; 91 v. 121; 97 v. 341.

Where five members of a village board of education were to be elected, two members for the term of two years and three for the term of four years and the ballots cast did not designate who were the candidates for the long and short terms no valid election was held, and the present incumbents will hold over until their successors are properly elected and qualified. Op. Atty. Gen. (1919), p. 1603.



Where an attempt was made to elect members of a school board at the November election in 1915, but said election was invalid, the members of said board whose term would have expired on the first Monday of January, 1916, will hold until their successors are duly elected at the November election in 1919, and begin their term on the first Monday in January, 1920. Op. Atty. Gen. (1917), p. 1676.

Election in newly created village.

Appointment of board of education on failure to elect.

Organization of board.

SECTION 4710. In villages hereafter created, a board of education shall be elected as provided in the preceding section. When villages hereafter created, or which have been heretofore created, fail or have failed to elect a board of education as provided in the preceding section, the commissioners of the county to which said district belongs, shall appoint such board, and the members so appointed shall serve until their successors are elected and qualified. The successors of the members so appointed, shall be elected at the first election for members of the board of education held in such district after such appointment; two members to serve for two years and three members for four years, and thereafter their successors shall be elected in the manner and for the term as provided by section 4709 of the General Code. The board so appointed by the county commissioners shall organize on the second Monday after their appointment. If the members of such board are elected at a special election held in such district the members so elected shall serve for the term indicated in the preceding section, from the first Monday in January after the preceding election for members of the board of education and the board shall organize on the second Monday after such election.

HISTORY.—R. S. § 3909; 75 v. 53, § 19; 97 v. 341; 103 v. 166.

Applied as to the authority of county commissioners to appoint members of the board of education of a new village school district. *Cline v. Martin*, 94 O. S. 420, 430.

Prior to the amendment of 97 v. 341 it was held that the inhabitants of the village district, and not those of the village as such, could vote at the election for members of the board of education; that is, if any territory of the village was attached for school purposes the inhabitants of such territory could not vote for the members of the board of education: *State ex rel. v. Raine*, 4 O. C. 72.

Where, at the first election of the members of the board of education, under this section, the office and term thereof are not indicated on the ballot, no election is had and the old members of the board for such former districts hold over: *State ex rel. v. Shafer*, 18 O. C. 525.

Held that where a newly incorporated village is formed with a tax duplicate valuation in the amount prescribed by Section 4681, G. C., such village becomes ipso facto a village school district; but that when such village fails to elect members of a board of education when the village officers are elected, a special election for members of such board of education is not authorized by law; and that such members can only be elected at regular elections in the odd numbered years. Op. Atty. Gen. (1913), p. 460.

Where a village school district is created by the incorporation of a village, a special election may be held in such newly created village school district for the purpose of electing members of a board of education.

Although the territory of a newly created village district, together with the territory annexed for school purposes, may be the same as that which was originally a rural school district, yet there is a new district and a new board of education should be elected. Op. Atty. Gen. (1917), p. 1898.

Where five members of the village board of education were to be elected, two members for the term of two years and three for the term of four years, and the ballots cast did not designate who were the candidates for the long and short terms, no valid election was held, and the present incumbents will hold over until their successors are properly elected and qualified. Op. Atty. Gen. (1919), p. 1603.

SECTION 4711. Electors, residing in territory attached to a village district for school purposes, may vote for school officers and on all school questions at the proper voting place in the village to which the territory is attached. If the village is divided into precincts, the board of education of the village school district shall assign such attached territory to the adjoining precinct or precincts of the village, and have a map prepared showing such assignment, which map shall be made a part of the records of the board. Electors residing in such attached territory may vote in the precinct to which they are assigned, but, if no assignment of territory is made, they shall vote in the precinct nearest their residence. An elector residing in the village but not in the village school district shall not vote in such village school district.

Assignment of electors in attached territory for voting purposes.

HISTORY.—R. S. § 3910; 75 v. 53, § 20; 97 v. 341.

Electors residing in territory attached to a village school district for school purposes by the county board of education, may vote for school offices and on all school questions in such village school district. Op. Atty. Gen. (1915), p. 527.

See Opinions of Attorney General, No. 2098 (1921), cited under Sec. 4692.

## CHAPTER 8

### RURAL SCHOOL DISTRICTS

#### SECTION

4712. Number and term of members of board of education in rural school districts.
4714. Where electors shall vote for officers and on submitted questions.
4715. Compensation of members and how same paid.
4726. Submission of question of centralization of schools.

#### SECTION

- 4726-1. Submission of question of centralization in townships having more than one school district.
4727. When schools centralized, centralization not to be discontinued within three years; transfer of territory to and from centralized school district.

Board of education in rural school districts.

SECTION 4712. In rural school districts, the board of education shall consist of five members elected at large at the same time township officers are elected and in the manner provided by law, for a term of four years.

HISTORY.—R. S. § 3915; 70 v. 195, §§ 26, 29; 70 v. 241, § 44; 89 v. 98; 93 v. 45; 97 v. 342; 104 v. 133 (135).

The provisions of Section 4736-1 relating to the successors of members of a board of education of a rural school district appointed by the commissioners of the county under the authority of that section have no application whatever to the election of successors of members of the board of education of a newly created rural school district appointed by the county board of education under authority of Section 4736, General Code. *State ex rel. v. Houtt*, 98 O. S. 451.

In the case of a vacancy in the school board filled by appointment, Section 10 of the General Code provides that a successor shall be elected for the unexpired term at the first general election for such office if such vacancy occurs more than thirty days before such election. Such appointee, however, has the same right as an elective officer to hold over until his successor is elected and qualified.

Where at an election for members of a township board of education five positions were to be filled, two for four years and three for approximately two years, and there was no designation upon the ballots to determine who were the candidates for the long term and who were the candidates for the short term, the terms were not definitely determined and there was no valid election. *Op. Atty. Gen.* (1912), p. 1102.

Where an attempt was made to elect members of a board of education of a township rural school district at the November election in 1915, but said election was invalid, the members of said board whose term would have expired on the first Monday in January, 1916, will hold until their successors are duly elected at the November election in 1919 and begin their term on the first Monday in January, 1920.

A vacancy does not occur in office where there is an incumbent who is duly authorized to hold over and is legally qualified to perform the duties of the office. *Op. Atty. Gen.* (1917), p. 1676.

Where a board of education has been appointed for a newly created rural school district by a county board of education under the provisions of Section 4376, G. C., the successors of the members of such provisional board of education should be elected at the first election for members of the board of education held in such district after such appointment. Two of such members should be elected for the term of two years and three for the term of four years. *Op. Atty. Gen.* (1917), p. 1634.



Members of boards of education in rural school districts are elected for the term of four years, except at the first election in a newly created district, where two members should be elected for two years and three for four years.

Boards of election should designate the number of the members of such board of education to be voted for and if for different terms then the length of each term. Op. Atty. Gen. (1917), p. 1948.

SECTION 4714. Electors residing in a rural school district may vote for school officers and on school questions at their regular voting places at all general elections, but if a special election is called by the board of education of a rural district the board may designate a convenient place in such district for the holding of such election and the board of deputy state supervisors of elections of the county in which such rural district is located shall provide for the holding of such special election in like manner as other special elections are held. Notice of such election shall be had as provided in section 4839.

Where electors shall vote for officers and on questions.

HISTORY.—R. S. § 3916; 75 v. 81, § 27; 89 v. 93; 93 v. 45; 97 v. 342; 104 v. 133 (135); 108 v. Pt. I. 704 (705).

Where there has been no assignment of the voters of a rural school district by the board of education under Section 4714, G. C., the electors of the rural school districts should vote for school officers and on all school questions in the respective precincts in which they reside. Op. Atty. Gen. (1915), p. 196.

Under the provisions of G. C. Sec. 4714, as amended, where school officers or school questions are being voted upon at the regular November election, ballots used in such school election should be furnished to the electors residing in a rural school district at their regular voting places and where any portion of the qualified electors in a rural school district have been denied the privilege of casting their ballots in such school election at the regular voting places, such school election is invalid. Op. Atty. Gen. (1920), p. 452.

SECTION 4715. Each member of the board of education of rural school districts, except such districts as contain less than sixteen square miles, shall receive as compensation two dollars for each regular meeting actually attended by such member, and members of such boards in rural school districts containing less than sixteen square miles shall receive one dollar for each meeting, but for not more than ten meetings in any year. The compensation allowed members of the board shall be paid from the contingent fund.

[Compensation of members; how paid.]

HISTORY.—R. S. § 3920; 75 v. 195, § 31; 86 v. 346; 89 v. 93; 93 v. 46; 97 v. 342; 99 v. 105; 104 v. 133 (135); 108 v. Pt. I. 506.

Inasmuch as Section 4715, G. C., prescribes the compensation of the members of boards of education of rural school districts, and the manner in which the same shall be paid, it was held that no expenses or fees could be paid from the county board of education fund by reason of attendance by members of rural boards of education at the meetings held under Section 4747-1, G. C. Op. Atty. Gen. (1917), p. 254.

The provisions of Section 20 of Article II of the State Constitution do not apply to members of rural boards of education and they can draw the increased compensation provided for in Section 4715, G. C., as amended in 198 O. L. 506, even though they were holding office at the time said amendment became effective, for

the reason that they did not draw a salary as contemplated in said constitutional provision but merely compensation.

Members of rural boards of education attending regular meetings of such board of education, if such meetings are held on and after August 28, 1919, when said amendment to Section 4715, G. C., became effective, are entitled to \$2.00 compensation for such attendance where the school district contains sixteen square miles or more, and members of boards of education in rural school districts containing less than sixteen square miles are entitled to receive \$1.00 compensation for each meeting attended; but no member of any rural board of education shall be paid for more than ten meetings during the year 1919, and only regular meetings of the board of education can be paid for. Op. Atty. Gen. (1919), p. 1515.

Question of centralization to be submitted to vote.

SECTION 4726. A rural board of education may submit the question of centralization, and, upon the petition of not less than one-fourth of the qualified electors of such rural district, or upon the order of the county board of education, must submit such question to the vote of the qualified electors of such rural district at a general election or a special election called for that purpose. If more votes are cast in favor of centralization than against it, at such election, such rural board of education shall proceed at once to the centralization of the schools of the rural district, and, if necessary, purchase a site or sites and erect a suitable building or buildings thereon. If, at such election, more votes are cast against the proposition of centralization than for it, the question shall not again be submitted to the electors of such rural district for a period of two years, except upon the petition of at least forty per cent. of the electors of such district.

HISTORY.—R. S. § 3927-2; 94 v. 317, § 2; 95 v. 649; 97 v. 344; 101 v. 299; 104 v. 133 (139).

Centralization of the schools of a township rural school district under this section, and suspension of particular schools therein under Section 7730, General Code, distinguished. State ex rel. v. Board of Education, 95 O. S. 367.

Where the electors of a township school district vote against the levying of a tax for the purchase of a site and erection of a building for a centralized school, the board of education is not bound to take any steps whatever toward centralizing the schools of the district, although the electors, upon submission of the proposition, voted in favor of centralization. State ex rel. v. Board of Education, 1 O. C. C. (N. S.) 89.

The question of centralization of schools must be submitted to the whole of the rural school district and not to a part of such district.

Centralization is the bringing together of all of the schools of a township or rural school district, while consolidation is the combining of two or more schools brought about through suspension. Questions of centralization of schools are governed by Sections 4726 and 4726-1; the consolidation of schools is accomplished under Section 7730, G. C. Op. Atty. Gen. (1919), p. 796.

A proposition for the centralization of schools under the provisions of Section 4726, G. C., and a proposition to issue bonds under the authority of Section 7625, G. C., may both be submitted to the electors of a rural school district as separate propositions at one election. Op. Atty. Gen. (1915), p. 67.

The provisions of Section 4726, G. C., taken in connection with the provisions of Section 4839, G. C., authorize the calling of a special election in a rural school district for the purpose of sub-

mitting the question of centralization to the vote of the qualified electors of said school district. Op. Atty. Gen. (1915), p. 338.

The provisions of Section 4726, G. C., as amended 104 O. L. 139, apply only to the schools of the school district, now known as rural school district, under the provisions of Section 4735, G. C., as amended 104 O. L. 138. Op. Atty. Gen. (1915), p. 487.

Where the qualified electors of a rural school district vote in favor of centralization under the provisions of Section 4726, G. C., 104 O. L. 139, the board of education in proceeding to centralize the schools of said district, may in the exercise of its sound discretion, secure sites at different points in such district and erect suitable buildings thereon for the accommodation of its pupils. Op. Atty. Gen. (1916), p. 496.

The centralization of the schools of a rural district by vote of the people thereof, resulting in the abandonment for school purposes of a lot conveyed to the directors of the school district for the use and purpose of a schoolhouse lot only, with condition of reverter in case the lot should cease to be used as a schoolhouse lot, works a forfeiture of such lot by the people acting voluntarily under the permission of the law. *Crouse v. Board of Education*. 12 App. 481.

See Opinions of Attorney General, No. 2098 (1921), cited under Sec. 4692.

SECTION 4726-1. In townships in which there are one or more school districts, the qualified electors of such school districts may vote on the question of centralizing the schools of said township districts, or of special school districts therein, without interfering with the existing school district organization until the result of the election shall have been determined. If at such election in any township a majority of all the votes cast shall be in favor of centralizing the schools in said township, the probate judge of the county shall create a new board of education for the said township, without delay, by selecting from the several boards of education thus consolidated, five suitable persons, giving each former district its fair representation in such selection, which such five persons so selected shall constitute the board of education for said township until the first township election thereafter; at such first township election thereafter the electors of such township shall elect two members of the board of education for two years, and three members to serve for three years, and at the proper elections thereafter their successors shall be elected for four years. If a majority of the electors in said township vote against said centralization at the time above designated, then the several school districts in said township shall proceed as though no election had been held.

Submission of  
question of  
centralization.

HISTORY.—106 v. 442.

Under Section 4726-1, G. C., 106 O. L. 442, where provision is made that three members of a board of education shall be elected for *three* years, an error is apparent and the phrase therein should read "shall elect two members of the board of education for two years and three members to serve for four years, and at the proper elections thereafter their successors shall be elected for four years." Op. Atty. Gen. (1918), p. 186.

In a township in which there are seven rural school districts the qualified electors of all of such districts may vote on the question of centralizing the schools of such township.

It is not permissible under the provisions of Section 4726-1, G. C., for a part of the school districts of a township to vote on



the centralization of the schools of such districts and prevent the electors of other districts, located in whole or in part within the township, from participating in said election.

A part of the districts of a township may be united as one district and then provide for centralization under the provisions of Section 4726, G. C.

The fact that certain territory is located in another civil township, but is attached to the territory of the township wherein all the school districts desire to vote on the question of centralizing the schools of such township, will not prevent the electors residing therein from participating in the election upon the question of centralizing the schools of such township under Section 4726-1, G. C. Op. Atty. Gen. (1918), p. 476.

A village school district cannot participate in an election for the centralization of the schools of a township under the provisions of Section 4726-1, G. C.

Where a township rural school district and a village school district desire to combine for their school activities regard should be made to the provisions of Section 4735-1, G. C., which provides for the dissolution by election of the rural school district and its joining to the village school district. Op. Atty. Gen. (1919), p. 842.

The question of centralization of schools and the issue of bonds necessary to the furtherance of the scheme of centralization, cannot be submitted at the same time to the qualified electors of the school district under Section 4726-1, G. C.

Where the qualified electors in a township proceed to the centralization of schools under Section 4726-1, G. C., such question can be submitted at either a general election or special election called for that purpose by the respective boards of education concerned, or upon the order of the county board of education, or upon the petition of not less than one-fourth of the qualified \* \* \* electors in such township. Op. Atty. Gen. (1919), p. 952.

Under Section 4726, G. C., all rural boards of education in a township must each call an election in their respective districts for centralization of the schools of such township, in order that such question may be legally voted on in the manner provided in Section 4839, G. C.

Section 4726-1, G. C., must be read in conjunction with Section 4726, G. C., and a county board of education has authority to order an election on centralization of schools in a township which has one or more rural school districts as its school territory.

Centralization of schools must be voted by the electors of a township and not a part of it, village and city school districts being excluded. Op. Atty. Gen. (1919), p. 960.

Where a rural school district, formerly created as a special school district, participated in a school election on the question of the centralization of the schools in a township, such rural or former special school district is bound by the result of the majority vote by the whole of such township, even if the majority of the votes cast in the special school district in question is against the proposition of centralization.

A county board of education has authority to order an election on centralization of schools in a township which has one or more rural school districts under Section 4726, G. C., which must be read in conjunction with Section 4726-1, G. C., in order to make the latter section effective. Op. Atty. Gen. (1919), p. 1229.

Submission of  
question of de-  
centralization.

SECTION 4727. When the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then only by petition and election, as provided in section 4726. If at such election more votes are cast against centralization than for it, the division into subdistricts as they existed prior to centralization shall thereby be re-established. Nothing in this

or the foregoing sections, namely, sections 4726 and 4726-I, shall prevent a county board of education upon the petition of two-thirds of the qualified electors of the territory petitioning for transfer, from transferring territory to or from a centralized school district, the same as to or from a district not centralized.

Transfer of territory authorized.

HISTORY.—R. S. § 3927-2; 94 v. 317, § 2; 95 v. 649; 97 v. 344; 104 v. 138 (189); 108 v. Pt. I 235.

Held, however, that Section 4727, General Code, does not prevent changes in boundaries authorized by other sections of the General Code which will inure to the best interests of the schools. *Johann v. Board of Education*, 26 O. C. C. (N. S.) 209.

This opinion has regard to a question arising under Section 4692, G. C., and not under Section 4696, G. C. *Op. Atty. Gen.* (1919), p. 1195.

The provision of Section 4727, General Code, as amended April 16, 1919 (108 O. L., pt. I, 235), authorizes a county board of education, upon the petition of two-thirds of the qualified electors of territory included in a centralized school district, to transfer such territory to another district.

Such action may be taken by the board of education upon the filing of the required petition, notwithstanding the pendency of proceedings to erect a school building in the centralized school district. *County Board of Education v. Board of Education of Benton Tp.* 104 O. S. (Decided Jan. 10, 1922.)

Suspension of school for a period of three years in the school district in which the school property involved in the instant case is located does not constitute abandonment on the ground of nonuser. *Wheaton v. Fernenbaugh*. 8 App. 182.

A school district is a "centralized school district," within the contemplation of the statute regulating the same from the time of the election resulting in favor of the proposition of centralization.

A writ of mandamus will not be issued to compel the transfer of funds from a centralized district to another school district, unless the transfer of territory, pursuant to which a resolution for a division and the transfer of funds was adopted, was within the authority of the county board of education. *State, ex rel., v. Board of Education*. 104 O. S. (Decided Jan. 10, 1922.)

## CHAPTER 9

### COUNTY SCHOOL DISTRICTS

#### SECTION

- 4728. Members of county board of education to be chosen by electors of county school district.
- 4728-1. How members of county board of education nominated; returns of election and canvass of vote.
- 4729. When members of county board of education to be elected and terms of said members.
- 4731. Oath of office; how vacancy in office filled.
- 4732. Meetings of county board of education; organization and record.
- 4733. Regular meetings when and where held.
- 4734. Per diem compensation and mileage for members of county board of education.
- 4735. Existing school districts to remain unless changed by county board.
- 4735-1. How rural school district dissolved and joined to a contiguous rural or village district.
- 4735-2. Title to property in dissolved district to vest in district to which it is joined.
- 4736. Power of county board to create new district by joining existing districts or parts thereof; appointment of board in new district.
- 4736-1. When board of county commissioners may appoint board of education in school district.
- 4736-2. Proceedings of board of education heretofore appointed by county commissioners validated.
- 4737. County board to publish minimum courses of study in school districts.
- 4739. Election of assistant county superintendents by county board of education, and terms of such assistants.

#### SECTION

- 4740. How village or centralized rural school district placed under supervision of county school district.
- 4743. Compensation of assistant county superintendent, and how paid.
- 4744. County superintendent; appointment, term, and duties.
- 7706. County superintendent and assistants to visit schools and assist teachers in performance of duties.
- 7706-1. County superintendent to assemble teachers for conference on school work.
- 7706-2. County superintendent and assistants to recommend text books for adoption.
- 7706-3. County superintendent to hold monthly meetings with assistants and with Sec. 4740 superintendents on matters of school efficiency.
- 7706-4. County superintendents to have supervision over teachers' training courses.
- 4744-1. Salary of county superintendent; how paid.
- 4744-2. Teachers to be employed in rural and village school districts to be certified to county auditor by county board, when.
- 4744-3. County auditor to retain out of apportionments to school districts money necessary to pay salaries and expenses of county and assistant county superintendents.
- 4744-3a. Printing of programs, examination supplies, etc.
- 4744-4. Who eligible as county superintendents.
- 4744-6. Offices of county superintendent to be supplied by county commissioners.
- 5653. Dog and kennel fund, how distributed.

County board of education; supervision of county districts by.

SECTION 4728. Each county school district shall be under the supervision and control of a county board of education composed of five members, who shall be electors residing in the territory composing the county school district and who may or may not be members of local boards of education. The members of such county board in office when this act goes into effect shall continue in office until their successors are elected and qualified.

HISTORY.—S. & S. 713; R. S. § 3928; 70 v. 195; 93 v. 283; 97 v. 345. 104 v. 133; 109 v. 242.

Sections 4728 et seq., General Code, relating to county school districts, are constitutional, and confer upon the county board of education discretion as to the transfer of territory from a rural to a village school district, which discretion is subject to control by the courts only upon proof of fraud or gross abuse. *Wogoman v. County Board of Education*, 27 O. C. A. 267, 5 App. 380, 95 O. S. 409; *Leatherman v. County Board of Education*, 96 O. S. 596.

See also, *Cline v. Martin*, 5 App. 90, 94 O. S. 420.

Held that there is no constitutional provision prohibiting a member of the legislature from serving as a member of the county board of education. *Op. Atty. Gen.* (1914), p. 817.



Held that the board of education of a county school district has no authority in law to publish the report of the schools of said district for the school year. Op. Atty. Gen. (1915), p. 1001.

The board of education of a county school district has no authority in law to employ counsel other than the prosecuting attorney of the county. Op. Atty. Gen. (1915), p. 664.

SECTION 4728-1. Candidates for members of the county board of education shall be nominated by petition. Such nomination papers shall be signed by petitioners, who shall be qualified electors residing in the county school district, not less in number than one per cent. of the electors voting at the last preceding election for members of local boards of education in the districts within the county school district; provided, however, that in no case shall the number of petitioners be fewer than twenty-five. The election for members of the county board of education shall be conducted in the same manner as are elections for other boards of education except as herein otherwise provided, and the returns thereof made to the board of deputy state supervisors of elections of the county, who shall canvas the same and issue a certificate of elections to each member so elected.

Nomination of candidates by petition; number of signers required; election; certificates.

HISTORY.—104 v. 133; 109 v. 242.

The vice president of a school board acts in the place of the president in the absence or inability of the president to act.

SECTION 4729. At the regular election of township and municipal officers in 1921 the qualified electors of each county school district in the state shall elect three members of the county board of education to succeed the three members having the shortest time to serve when this act goes into effect and to serve for four years from the third Saturday of January, 1922, and every four years thereafter their successors shall be elected in like manner for a term of four years. At the regular election of township and municipal officers in 1923 the qualified electors of each county school district shall elect two members of the county board of education to succeed the two remaining members of the board not chosen by popular vote and to serve for four years from the third Saturday of January, 1924, and every four years thereafter their successors shall be elected in like manner to serve for a term of four years.

When and how members of county board elected; term of office.

HISTORY.—109 v. 242.

SECTION 4731. Each member of the county board of education shall before entering upon the duties of his office, take an oath that he will faithfully perform the duties of his office. Such oath may be taken before any one authorized by law to administer oaths. If any person so elected shall fail to take such oath before the beginning of his term, the office to which he was elected shall be considered vacant. Any vacancy on the board shall be filled in the same manner as is provided in section 4748 of the General Code.

Oath of office; vacancy.

HISTORY.—S. & S. 713; R. S. § 3929; 75 v. 84, § 35; 89 v. 94; 93 v. 283; 97 v. 346; 104 v. 133 (137); 108 v. Pt. I 704 (706).

When two special meetings of a board of education are called for the same purpose, one by the president of the board, the other by two members of the board, each in accordance with law, both are legal calls and the one to prevail will be that at which the board legally disposes of the matter for which the call was made. *Opp. Atty Gen.*, No. 1846, Feb. 7, 1921.

Meetings of  
county board;  
organization;  
record.

**SECTION 4732.** Each county board of education shall meet on the third Saturday of January of each year, and shall organize by electing one of its members president and another vice-president, both of whom shall serve for one year. The county superintendent shall act as secretary of the board. The secretary shall keep a full record of the proceedings of the board, properly indexed, in a book provided for that purpose. Each motion, with the name of the person making it and the vote thereon, shall be entered on the record.

**HISTORY.**—S. & S. 713; R. S. § 3929; 75 v. 84, § 35; 89 v. 94; 93 v. 283; 97 v. 346; 104 v. 133 (137); 108 v. Pt. I 704 (706).

A record of a county board of education which discloses a motion, the name of the member of the board making the motion and the results of the vote upon the motion, is a substantial compliance with Section 4732, General Code. *Edwards v. Matthews*, 100 O. S. 487.

Regular meet-  
ings when and  
where held.

**SECTION 4733.** The regular meetings of the county board of education shall be held at the office of the county superintendent. At the time of the first meetings, the board shall fix the time for holding its regular meetings. Regular meetings shall be held at least every two months and when necessary other meetings may be held at the call of the president, or any two members. A majority of the board shall constitute a quorum at any regular or special meeting.

**HISTORY.**—S. & S. 713; R. S. § 3929; 75 v. 84, § 35; 89 v. 94; 93 v. 283; 97 v. 346; 104 v. 133 (137).

An adjourned or continued meeting of a county board of education is but a prolongation or continuation of the meeting from which such adjournment or continuation was had.

The provisions of law (Section 4754, G. C.) with reference to reading and approving minutes of previous meetings are directory only, and the failure to do so is not such a material defect as will justify a court of equity in interfering with the action of the board of education. *Op. Atty. Gen.* (1917), p. 1393.

Per diem and  
mileage for  
members.

**SECTION 4734.** Each member of the county board of education shall be paid three dollars a day and mileage at the rate of ten cents a mile one way, to cover his actual and necessary expenses incurred during his attendance upon any meeting of the board. Such expenses, and the expenses of the county superintendent, itemized and verified shall be paid from the county board of education fund upon vouchers signed by the president of the board.

**HISTORY.**—S. & S. 713; R. S. § 3923; 70 v. 195, § 34; 93 v. 283; 97 v. 345; 104 v. 133 (137); 108 v. Pt. I 704 (707).

The board of education of a county school district has no authority in law to publish a report of the schools of said district for the school year. *Op. Atty. Gen.* (1915), p. 1001.

The word "verify" as used in Section 4734, G. C., and other sections of the General Code in reference to the expense accounts means verified by affidavit, that is, the account is required to be sworn to before some officer duly authorized to administer oaths. Op. Atty. Gen. (1917), p. 630.

No expenses, fees or salary can be paid from the county board of education fund, or any other fund, for a meeting held by the members of the boards of education of the various village and rural school districts within the county under the provisions of Section 4747-1, G. C. Op. Atty. Gen. (1917), p. 254.

Under the provisions of the constitution of Ohio, a member of the General Assembly can at the same time serve as a member of the county board of education. Op. Atty. Gen. (1920), p. 373.

**SECTION 4735.** The present existing township and special school districts shall constitute rural school districts until changed by the county board of education, and all officers and members of boards of education of such existing districts shall continue to hold and exercise their respective offices and powers until their terms expire and until their successors are elected and qualified.

Existing districts remain until changed by county board. Officers continue until successors elected.

**HISTORY.**—S. & S. 713; R. S. § 3928; 70 v. 195, § 34; 93 v. 288; 97 v. 345; 104 v. 133 (132).

It was held under the provisions of this section, before the amendment of Section 4692, General Code, in its present form, that a member of a board of education residing in territory which is transferred for school purposes to another township rural school district continues to hold office until the expiration of his term. *Thompson v. State*, 92 O. S. 284.

Section 4735 provides that the township and special school districts existing at the time of its enactment shall continue rural school districts until changed by the county board of education. *Cline v. Martin*, 94 O. S. 420, 430.

Where territory, in which a member of a board of education lives, was transferred from one rural school district to another prior to the amendment to Section 4692, G. C., 106 O. L. 397, such member will hold his office as a member of such board of education to the end of the term for which he was elected. Op. Atty. Gen. (1917), p. 490.

Under the provisions of Section 4735, G. C., that existing township and special school districts shall constitute rural school districts the title to school property which formerly belonged to said township or special district becomes vested in the rural district. Op. Atty. Gen. (1918), p. 1371.

**SECTION 4735-I.** When a petition signed by not less than one-fourth of the electors residing within the territory constituting a rural school district, praying that the rural district be dissolved and joined to a contiguous rural or village district, is presented to the board of education of such district; or when such board, by a majority vote of the full membership thereof, shall decide to submit the question to dissolve and join a contiguous rural or village district, the board shall fix the time of holding such election at a special or general election. The clerk of the board of such district shall notify the deputy state supervisors of elections, of the date of such election and the purposes thereof, and such deputy state supervisors shall provide therefor. The clerk of the board of education shall post notices thereof in five public places within the district. The

Procedure to dissolve rural district and join to another contiguous thereto.



result shall be determined by a majority vote of such electors.

HISTORY.—104 v. 133 (138).

Prior existing bonded indebtedness of a rural school district which proceeds under the provisions of Section 4735 and thereby dissolves and joins a contiguous rural or village district, remains a charge only upon the taxable real and personal property of such rural school district creating said bonded indebtedness, and may not become a charge upon the property of the district formed by the union of said rural school district and some other school district under the provisions of Sections 4735-1 and 4735-2, G. C. Op. Atty. Gen. (1915), p. 86.

Where the board of education of a rural school district under authority of Section 4735-1, G. C., 104 O. L. 138, submits to a vote of the qualified electors of such district the proposition of dissolving said district and joining it to a contiguous rural or village school district and the vote is unfavorable thereto, upon a petition signed by not less than one-fourth of the electors residing in said district said board of education may again submit said proposition to a vote of the electors of said rural school district. Op. Atty. Gen. (1915), p. 1214.

Where a township rural school district and a village school district desire to combine their school activities regard should be had to Section 4735-1, G. C., which provides for the dissolution by election of the rural district and its joining to the village school district. Op. Atty. Gen. (1919), p. 842.

Title to property vests in board of education to which it is joined.

SECTION 4735-2. The legal title of the property of the rural school district, in case such rural district is dissolved and joined to a rural or village district as provided in section 4735-1, shall become vested in the board of education of the rural or village school district to which such district is joined. The school fund of such dissolved rural district shall become a part of the fund of the rural or village school district which it voted to join. The dissolution of such district shall not be complete until the board of education of the district has provided for the payment of any indebtedness that may exist.

HISTORY.—104 v. 133 (138).

Prior existing bonded indebtedness of a rural school district which proceeds under the provisions of Section 4735-1 and thereby dissolves and joins a contiguous rural or village school district, remains a charge only upon the taxable real and personal property of such rural school district creating said bonded indebtedness, and may not become a charge upon the property of the district and such other school district under the provisions of Sections 4735-1 and 4735-2, G. C. Op. Atty. Gen. (1915), p. 86.

The board of education of a county school district has no authority under the provisions of Section 4736, G. C., as amended 104 O. L. 138, to dissolve a rural school district and join it with a contiguous rural or village school district within said county district. An election for this purpose must be held under authority of Sections 4735-1 and 4735-2, G. C., as found in 104 O. L. 139, resulting in a vote favorable to the dissolution of such rural school district and to its union with the contiguous rural or village school district, before the question of centralization can be submitted to the electors of the school district resulting from such union. Op. Atty. Gen. (1915), p. 487.

Power to create school district.

SECTION 4736. The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable

division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office until the first election for members of a board of education held in such district after such appointment, at which said first election two members shall be elected for two years and three members shall be elected for four years, and thereafter their successors shall be elected in the same manner and for the term as is provided by section 4712 of the General Code. The board so appointed by the county board of education shall organize on the second Monday after their appointment.

Appointment  
of board in  
new district;  
election.

HISTORY.—R. S. § 3980; 97 v. 346; 104 v. 133 (138); 106 v. 396 (397); 108 v. Pt. I 704 (707).

This section confers a broad discretion on the county board of education in the matter of the establishment of new school districts, and where this is done by attaching four former sub-districts to a village school district, a court will not grant relief to a complaining tax-payer in the absence of a showing of fraud or an intentional abuse of discretion. *Cline v. Martin*, 24 O. C. C. (N. S.) 81; *Wogoman v. Board of Education*, 5 App. 380, 27 O. C. A. 267.

A county board of education has authority to dissolve two village school districts and consolidate them into one, in the absence of procedure on the part of said districts under sections 4688 and 4688-1, General Code, which would exempt them from such action. *Fisher v. Whittus*, 6 App. 415.

Members of the board of education of a new rural school district created by the county board of education under the provisions of this section, are to be appointed by the county board of education and not by the county commissioners under Section 4736-1, General Code. *State v. Houpt*, 98 O. S. 451.

Electors signing a remonstrance against the rearrangement of school districts are at liberty to withdraw their names at any time within the thirty day period or until official or judicial action has been taken on the same. *Board of Education v. Board of Education*, 8 App. 120, 28 O. C. A. 198.

For decision construing a former statute relating to this subject, see *Board of Education v. Board of Education*, 46 O. S. 595.

Held, that the provisions of this section should be read in connection with those of Section 4692, General Code, and that a county board of education has no authority to transfer territory which is not inhabited, under the latter section, solely for the purpose of equalizing the tax valuations of school districts. *Mathews v. Board of Education*, 8 App. 206, 30 O. C. A. 305.

The election of members of a board of education of a school district during the existence of an injunction restraining the creation and organization of such school district is invalid.

The appointment of members of a board of education by the county board of education pursuant to the authority conveyed by Section 4736, General Code, becomes effective upon the dissolution of such injunction, and they will serve until their successors are elected as provided by that section. *Meckley, Auditor, et al. v. Kunzie, Auditor*, 101 O. S. 494.

The phrase "territory affected" used in Section 4736, General Code, with respect to the right of remonstrance, applies to the

territory of the old school district, embracing both the newly created district and the territory outside thereof. *State ex rel. v. Howard*, 101 O. S. 532.

Where the legislature in plain and unambiguous language within the exercise of its constitutional power vests the power and discretion in a county board of education to "create a school district from one or more school districts or parts thereof" no presumption arises that it was the intention of the legislature that the power and discretion thus vested in such board was intended to be limited or controlled by any other section of the Code theretofore enacted and unrepealed, providing for an entirely different mode of transferring territory from one district to another.

Section 4736, General Code, vests in the county board of education the power to create a new school district from an existing district and a part of another existing district, and, in the absence of fraud, bad faith, or the taking of such arbitrary, whimsical and unreasonable action by the board as amounts to an abuse of discretion, the only limitation upon such power and discretion is the limitation contained in that section providing for a remonstrance by a majority of the qualified electors residing in the territory affected by such order. *County Board of Education v. Boehm et al.*, 102 O. S. 292.

Held that the county surveyor is not entitled to remuneration for services performed under Section 4736, G. C., 104 O. L. 138. *Op. Atty. Gen.* (1915), p. 284.

The electors residing in territory attached to a village school district for school purposes by the county board of education under this section, may vote for school officers and on all school questions in such village school district. *Op. Atty. Gen.* (1915), p. 527.

Section 4692 and Section 4736, G. C., provide for two separate and distinct matters, one for the transfer of territory and the other for the arranging of school districts. The provisions of these sections are separate and distinct, and the provisions of one of the sections are not in any way modified or controlled by the provisions of the other. *Op. Atty. Gen.* (1917), p. 1104.

A county board of education may under the provisions of Section 4736, G. C., as amended in 106 O. L. 397, create a new school district by uniting a village school district and a rural school district.

Where a county board of education under the authority of this section creates a new school district, and a remonstrance is filed against such action, such remonstrance must contain the names of a majority of the qualified electors of the entire new district. *Op. Atty. Gen.* (1917), p. 1014.

Held that territory in Lenox civil township, Ashtabula County, Ohio, which territory is a part of Morgan township rural school district, adjoining, did not cease to be a part of said Morgan township rural school district by reason of the fact that the electors residing in such territory illegally participated in a school election called by the board of education of Lenox township rural school district; and that the only way by which territory could be transferred from Morgan township rural school district was by such proceeding in accordance with the statutes providing for such transfer. *Op. Atty. Gen.* (1917), p. 260.

The pendency of an action in the court of common pleas wherein it is attempted to enjoin a county board of education from making effective its previous action creating a school district pursuant to Section 4736, General Code, is not a defense in an action in *quo warranto* in this court against the members of a board of education of a school district, the whole of which has been absorbed in the creation of the new school district, the board of which has been duly appointed and qualified and has organized as provided by Section 4736, General Code.

When, pursuant to the provisions of Section 4736, General Code, a new school district is created by a county board of education by proceedings in conformity with the requirements of the law, and the members of a board of education of a newly-created district



are duly appointed and qualified, and such board duly organized as therein provided, the duties and authority of members of a board of education of a former school district which has been absorbed by the creation of a new district are *ipso facto* terminated.

The absence from the provisions of the statute relative to the creation of new school districts by the county board of education of a requirement that notice be given of action pursuant to such provisions does not invalidate the law. Section 4736, General Code, contravenes no provision of the constitution, state or federal. State, ex rel., v. Schneider. 103 O. S.. (Decided Nov. 22, 1921.)

Under Section 4736, G. C., 106 O. L. 397, a county board of education may create a new school district from a rural school district and a village school district over which it has jurisdiction.

It is not necessary to file a map of such newly created district with the county auditor. The filing of a map applies to a transfer of territory from one district to another.

In such case the entire territory of the newly created district is considered the territory "affected" and a majority of the qualified electors of the newly created district is necessary to defeat the action of the county board of education by remonstrance. Op. Atty. Gen. (1917), p. 987.

Held that persons who signed a remonstrance against the formation of a new school district under this section may withdraw their names by petition or otherwise at any time before said remonstrance is acted upon by the county board of education. Op. Atty. Gen. (1917), p. 1623.

In creating new districts out of an old district or part thereof, or by transferring territory from one district to another, the county board of education should equitably apportion the indebtedness of the original district or districts to the districts newly formed or created. Op. Atty. Gen. (1917), p. 2273.

The county board of education may create a new school district from one or more districts or parts thereof as provided in Section 4736, G. C., 106 O. L. 397, and shall file with the board or boards of education from which the territory is taken a written notice of such proposed arrangement. The electors of the territory of the new district have 30 days time from the filing of such written notice to remonstrate against such proposed arrangement.

In the creation of a new school district by a county board of education, under the provisions of this section, it is not necessary to file a map with the county auditor showing the boundaries of the territory transferred. Op. Atty. Gen. (1917), p. 1379.

Where the members of a board of education have been appointed by the county board of education for a school district newly created by such county board of education under this section, the successors of the members so appointed should be elected at the first election for members of the board of education held in such school district after such appointment. Two of such members should be elected for the term of two years and three for the term of four years. Op. Atty. Gen. (1917), p. 1634.

Where territory is transferred from one district to another the privilege of remonstrating extends only to those electors who reside in the territory so transferred.

Where a new school district is created by action of the county board of education, the right to remonstrate extends only to the electors of the newly created district. Op. Atty. Gen. (1918), p. 1017.

County boards of education have full authority to create a new school district from one or more districts or parts thereof. Op. Atty. Gen. (1919), p. 960.

Where a new school district is created by the county board of education such county board should direct an equitable division of the funds and indebtedness of the newly created district. Op. Atty. Gen. (1919), p. 1119.

Where a board of education has been appointed by the board of county commissioners as provided in Section 4736-1, G. C., the successors to the members of such board must be elected at the

first election for members of the board of education held in such district after such appointment, two members to serve for two years and three for four years.

Members of boards of education should be nominated for the term for which they are to be elected, that is, if two members are to be elected for two years and three for four years nominations must be made for the short and long terms. Op. Atty. Gen. (1917), p. 1626.

Where the ballots used in a school election in a newly created district are not in conformity with the mandate contained in G. C. Sec. 4736, there is no valid election for members of the board of education. Op. Atty. Gen. (1920), p. 452.

Where the county board of education has appointed a board of education in a newly created district, under the provisions of G. C. Sec. 4736, the county auditor should make the distribution of school funds to such appointed board of education until their successors are legally elected and qualified. Op. Atty. Gen. (1920), p. 452.

See Opinions of Attorney General, No. 2324 (1921), cited under Sec. 7690.

Election of members of board of education in new district; appointment in certain cases.

SECTION 4736-1. In rural school districts hereafter created by a county board of education, a board of education shall be elected as provided in section 4712 of the General Code. When rural school districts hereafter so created, or which have been heretofore so created, fail or have failed to elect a board of education as provided in said section 4712, or whenever there exists such school district which for any reason or cause is not provided with a board of education, the commissioners of the county to which such district belongs shall appoint such board of education, and the members so appointed shall serve until their successors are elected and qualified. The successors of the members so appointed shall be elected at the first election for members of the board of education held in such district after such appointment, two members to serve for two years and three members for four years. And thereafter their successors shall be elected in the manner and for the term as provided by section 4712 of the General Code. The board so appointed by the commissioners of the county shall organize on the second Monday after their appointment.

HISTORY.—106 v. 550, § 1.

The provisions of this section in relation to the successors of members of a board of education of a rural school district appointed by the commissioners of a county under its authority, have no application to the election of successors of members of the board of education of a rural school district appointed by the county board of education under authority of Section 4736, General Code. State ex rel. v. Hout, 98 O. S. 451, 452.

For application of this section with respect to the appointment of members of a board of education in a new school district, see Cline v. Martin, 94 O. S. 420, 430.

The county board of education may appoint a board of education for a school district created by it, but if it fails to do so, or if for any other reason there exists a district without a board of education, then the board of county commissioners of the county shall appoint such board of education. Op. Atty. Gen. (1917), p. 987.

SECTION 4736-2. All appointments of a board of education for such rural school district heretofore made by the commissioners of the county to which such rural school district belongs shall be held to be legal, valid and binding upon such rural school district, and to give such appointed boards the same authority as have other rural school district boards. All proceedings, otherwise legal under the law's applicable to rural school boards, heretofore or hereafter had by such boards so appointed shall be held legal, valid and binding upon such school districts. The bonds heretofore, or hereafter, issued and sold by any such rural school district having a board of education heretofore, or hereafter, appointed by the commissioners of the county to which such district belongs, shall not be declared to be invalid by reason of any want of authority of such board of education of such district to provide for the issuing and sale of such bonds, but, if regularly issued for a lawful purpose and sold for not less than par and accrued interest such bonds shall be held to be legal, valid and binding obligations of such district issuing the same.

Proceedings of appointed board shall be legal.

HISTORY.—106 v. 550 (551), § 2.

SECTION 4737. The county board of education shall publish with the advice of the county superintendent a minimum course of study which shall be a guide to local boards of education in prescribing the courses of study for the school under their control. The county board may publish different courses of study for village and rural school districts.

Publication of minimum course of study by county board.

HISTORY.—R. S. § 3930; 97 v. 346; 104 v. 133 (140).

The county board of education has no authority under this section to publish a report of the schools of said district for the school year. Op. Atty. Gen. (1915), p. 1001.

See Opinions of Attorney General, No. 2392 (1921), cited under Sec. 7645.

SECTION 4739. One or more assistant county superintendents, as may be determined by the county board of education, may be elected for a term of not to exceed three years in each county school district by the county board of education on the nomination of the county superintendent. Provided, however, that no assistant county superintendent shall be elected in 1921 for a longer term than one year. A person other than the one nominated by the county superintendent may be elected by a majority vote of the county board of education.

Assistant county superintendents; election, term.

HISTORY.—R. S. § 3932; 75 v. 120; 97 v. 347; 104 v. 133; 109 v. 243.

The term of assistant county superintendents of schools for the year 1922-1923 begins on August 1, 1922, and not on September 1, 1922. Op. Atty. Gen. No. 3224, June 16, 1922.

See Opinions of Attorney General, No. 2234 (1921), cited under Sec. 7691; No. 2390 (1921), cited under Sec. 7769-1.

SECTION 4740. Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent upon the nomination of the county superintendent shall upon application to the county board of education before June first of any year be placed under the supervision of the county superintendent.

Village or centralized district for high school purposes may be placed under supervision of county superintendent, how.



ent. Such superintendents shall be employed by the local boards of education upon the nomination of the county superintendent, but the local board of education, by a majority vote of its full membership, may employ a superintendent not so nominated. Such superintendent shall perform the duties prescribed by law for assistant county superintendents, but shall teach for such part of the day as the board of education of the district or districts may direct.

HISTORY.—R. S. § 3932; 75 v. 120; 97 v. 347; 104 v. 133; 106 v. 396; 107 v. 621; 109 v. 243.

See Opinions of Attorney General, No. 2098 (1921), cited under Sec. 4692.

Compensation  
of assistant  
county super-  
intendent;  
how paid.

SECTION 4743. The compensation of the assistant county superintendent shall be fixed at the same time that the appointment is made and by the same authority which appoints him, such compensation shall be paid out of the county board of education fund on vouchers signed by the president of the county board. The salary of any assistant county superintendent shall in no case be less than one thousand dollars per annum, half of which salary not to exceed seven hundred and fifty dollars shall be paid by the state and the remainder by the county school district. The part paid by the county school district shall be prorated among the village and rural school districts in such county school district in proportion to the number of teachers employed in each district.

HISTORY.—R. S. § 3935; 75 v. 120; 97 v. 348; 104 v. 133; 109 v. 243.

See Opinions of Attorney General (1916), p. 1129, cited under Sec. 7827.

County super-  
intendent; ap-  
pointment,  
term, duties.

SECTION 4744. The county board of education at a regular meeting held not later than July 20th, shall appoint a county superintendent for a term not longer than three years commencing on the first day of August. Such county superintendent shall have the educational qualifications mentioned in section 4744-4. He shall be in all respects the executive officer of the county board of education, and shall attend all meetings with the privilege of discussion but not of voting.

HISTORY.—R. S. § 3935; 75 v. 120, § 5; 97 v. 348; 104 v. 133 (142).

A county superintendent of schools, appointed by the county board of education under this section of the General Code, is a public officer and as such his eligibility or title to the office cannot be brought in question in a suit by a tax-payer to enjoin the payment of his official salary. State ex. rel. v. Vance, 18 O. N. P. (N. S.) 198.

For other decisions touching this point, see: Ward v. Board of Education, 21 O. C. C. 699; State ex. rel. v. Vickers, 58 O. S. 730.

A county superintendent can only be elected by the county board of education which is in power at the beginning of the term of such county superintendent. Op. Atty. Gen. (1917), p. 1393.

See Opinions of Attorney General, No. 2234 (1921), cited under Sec. 7691.

SECTION 7706. The county superintendent and each assistant county superintendent shall visit the schools in the county school district, direct and assist teachers in the performance of their duties, and classify and control the promotion of pupils. The county superintendent shall spend not less than one-half of his working time, and the assistant county superintendents shall spend such portion of their time as the county superintendent may designate in actual class room supervision. Such time as is not spent in actual supervision shall be used for organization and administrative purposes, and in the instruction of teachers. At the request of the county board of education the county superintendent and the assistant county superintendents shall teach in teachers' training courses which may be organized in the county school district.

Duties of county and assistant county superintendents.

HISTORY.—R. S. § 4017a; 94 v. 377; 97 v. 362; 104 v. 133; 109 v. 244.

See Opinions of Attorney General, as follows: No. 2390 (1921), cited under Sec. 7769-1; No. 2324 (1921), cited under Sec. 7690.

SECTION 7706-1. The county superintendent shall, as often as advisable, assemble the teachers, assistant county superintendents and the superintendents provided for under section 4740, of the county school district for the purpose of conference on the course of study, discipline, school management, and other school work and for the promotion of the general good of all the schools in the county school district.

Conference of county superintendent, assistants and teachers.

HISTORY.—104 v. 133; 109 v. 244.

SECTION 7706-2. It shall be the duty of the county superintendent and assistant county superintendents to recommend to the county board of education such text books and courses of study as are most suitable for adoption.

Text books and courses of study.

HISTORY.—104 v. 133; 107 v. 621; 109 v. 245.

See Opinions of Attorney General, as follows: No. 2392 (1921), cited under Sec. 7645; (1914) p. 1446, cited under Sec. 7713; (1916) p. 1359, cited under Sec. 7713.

SECTION 7706-3. The county superintendent shall hold monthly meetings with the assistant county superintendents and the superintendents provided for under section 4740 and advise with them on matters of school efficiency. He shall visit and inspect the schools under his supervision as often as possible and with the advice of the assistant county superintendent shall outline a schedule of school visitation for the teachers of the county school district.

Monthly meetings of county and assistant superintendents.

HISTORY.—104 v. 133; 109 v. 245.

SECTION 7706-4. The county superintendent shall have direct supervision over the training of teachers in any training courses which may be given in or in connection with the county normal school and shall teach in such school not more than one hundred periods in any one year. It

Supervision of teachers in training courses.

shall be his duty to see that all reports required by law are made out and sent to the county auditor and superintendent of public instruction and to make such other reports as the superintendent of public instruction may require.

HISTORY.—104 v. 133; 109 v. 245; 109 v. 592.

Salary of  
county super-  
intendent; how  
paid.

SECTION 4744-1. The salary of the county superintendent shall be fixed by the county board of education to be not less than twelve hundred dollars per year, and shall be paid out of the county board of education fund on vouchers signed by the president of the county board. Half of such salary up to the amount of two thousand dollars shall be paid by the state and the balance by the county school district. In no case shall the amount paid by the state be more than one thousand dollars. The county board may also allow the county superintendent a sum not to exceed three hundred dollars per annum for traveling expenses and may employ an efficient stenographer or clerk for such superintendent. The part of all salaries and expenses paid by the county school district shall be prorated among the village and rural school districts in the county in proportion to the number of teachers employed in each district, but the county board of education must take into consideration and use any funds secured from the county dog and kennel fund or from any other source and which is not already appropriated before the amount is prorated to the various rural and village districts.

HISTORY.—104 v. 133 (142); 107 v. 621 (622); 108 v. Pt. I 704 (707).

There is nothing in Section 4744-1, G. C., which prohibits a county board of education from fixing the salary of the county superintendent at any amount in excess of \$1200 per year as it may deem proper.

Where the board of education fixes the salary of the county superintendent in an amount greater than \$2000 the county district is to pay the balance remaining after deducting \$1000 to be paid by the state and such balance is to be apportioned and certified as provided in Sections 4744-1, 4744-2 and 4744-3, G. C. Op. Atty. Gen. (1914), p. 1265.

The county board of education may allow a county superintendent an amount sufficient to cover the actual and necessary expenses of maintaining and operating an automobile owned by him and used in the discharge of his services, having due regard for the extent of such use in public and private business. Op. Atty. Gen. (1915), p. 1260.

The county superintendent of schools as a county school examiner is entitled to the compensation of \$3.00 per day provided for in Section 7828, G. C., for conducting an investigation provided for in Section 7827, G. C. Op. Atty. Gen. (1916), p. 1129.

A county superintendent may sit as a jurymen in the common pleas court and is entitled to a jurymen's fees in addition to his compensation as such county superintendent. Op. Atty. Gen. (1917), p. 377.

A resolution passed by a board of education on September 4, 1918, increasing the salary of a county superintendent of schools for the term for which he was appointed, which said term begins August 1 of said year, where his term and salary had been previously fixed on March 13 of the same year, is retroactive and illegal in so far as it applies to the services rendered prior to its passage. Op. Atty. Gen. (1919), p. 1604.



Questions involving the constitutionality of statutes will not be determined by this court, unless such determination is essential to the rendition of a proper judgment in the instant case.

Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted.

The express power to fix a salary does not grant by implication the power to unfix such salary. The exercise of the power for the full three-year term, agreeable to the statute, exhausts the power conferred by the statute. The power to change after once having fixed the term and salary, to employ the language of the Locher case, *supra*, must be "clear and distinctly granted." The power not being so granted to the board of education cannot be exercised by the board of education, and its attempted exercise thereof is *ultra vires*. The action of the board in attempting to change the salary of the county superintendent, after once fixed, is illegal and void under the statute. State, ex. rel., v. Cook. 103 O. S. 465. (Decided Nov. 22, 1921.)

See Opinions of Attorney General, as follows: (1916) p. 1129, cited under Sec. 7827; (1917) p. 377, cited under Sec. 7837. (1917) p. 404, cited under Sec. 7827.

SECTION 4744-2. On or before the first day of August of each year the county board of education shall certify to the county auditor the number of teachers to be employed for the ensuing year in the various rural and village school districts within the county school district, and also the number of assistant county superintendents employed and their compensation and the compensation of the county superintendent for the time appointed; and such board of education shall also certify to the county auditor the amounts to be apportioned to each district for the payment of its share of the salaries of the county superintendent and assistant county superintendents and of the local expense of the normal school in each county, and the contingent expenses of the county board of education.

Number of teachers and assistant superintendents and compensation certified to county auditor; also apportionment to each district.

HISTORY.—104 v. 133; 108 v. Pt. I 233; 109 v. 243.

If the county auditor has made the semi-annual apportionment of school funds upon the basis of an erroneous certification, prior to the correction thereof, the erroneous apportionment necessarily resulting therefrom may be adjusted at the next semi-annual settlement upon the correction of the certification. Op. Atty. Gen. (1916), p. 1964.

Held that the certificate of the county board to the county auditor under Section 4744-3, G. C., may be amended to cover an increase in salary allowed by the county board to the successor of a county superintendent who had resigned. Op. Atty. Gen. (1918), p. 1668.

The county commissioners may not lawfully transfer from the general county fund, or from the proceeds of any other county tax levies to supply deficiencies in the county board of education fund in case there is no money available in the sheep fund under Section 5656, G. C., as amended. Op. Atty. Gen. (1914), p. 1206.

The board of education of a county school district has no authority in law to publish a report of the schools of said district for the school year and pay same out of the contingent expense fund or otherwise. Op. Atty. Gen. (1915), p. 1001.

Held that the county surveyor is not entitled to be paid by the county board of education for services performed by him under Section 4736, G. C. Op. Atty. Gen. (1915), p. 284.

A county board of education has no authority in law to levy a tax for any purpose and may not therefore borrow money under Section 5656, G. C., for the purpose of paying for the transportation

of pupils furnished by said county board of education under provision of the latter part of Section 7734, G. C., as amended 104 O. L. 140. Op. Atty. Gen. (1915), 2112.

Held that the county board of education is without authority in law to purchase supplies, including a motion picture machine, for the purpose of aiding the county superintendent in his official supervisory work, and pay for the same out of the county board of education fund. Op. Atty. Gen. (1915), p. 2187.

Section 4744-3, G. C., 106 O. L. 399, provides that the county auditor when making his semi-annual appropriation of the school funds of the various village and rural school districts shall set aside a contingent as well as a tuition fund to the credit of the "county board of education fund."

Where, in action between the board of education of a school district within the county school district and the county board of education, the prosecuting attorney of the county declines to represent said county board of education, said county board may, upon the filing with it of a certificate of available money in said contingent fund for said purpose, employ counsel to represent it in said case, and out of said fund pay for the services rendered. Op. Atty. Gen. (1916), p. 915.

Section 2918 of the General Code authorizes county boards of education to employ counsel when the prosecuting attorney refuses to act as required under the provisions of Section 4761, G. C.

Such counsel so employed by county boards of education may be paid from the contingent fund provided for in Section 4744-3, G. C. Op. Atty. Gen. (1917), p. 270.

Under existing law county boards of education are without authority to purchase wagons for the conveyance of school children, such conveyance to remain the property of the county board and to be assigned by the county board to the various school districts in the county district. Op. Atty. Gen. (1919), p. 1243.

See Opinions of Attorney General, No. 2324 (1921), cited under Sec. 7690.

Amounts to pay portion of salaries retained at time of apportionment.

SECTION 4744-3. The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the "county board of education fund." The county board of education shall certify under oath to the state auditor the amount due from the state as its share of the salaries of the county and assistant county superintendents of such county school district for the next six months. Upon receipt by the state auditor of such certificate, he shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund.

HISTORY.—104 v. 133; 106 v. 396; 109 v. 244.

Printing of programs, examination supplies, etc.

SECTION 4744-3a. The county board of education is authorized to pay for the printing of programs, examinations and other necessary printing supplies for the use of the county superintendent and the superintendents and teachers of the county school unit. The county board of education is authorized to pay the expenses of its educational meetings required by law.

HISTORY.—107 v. 621 (622).

SECTION 4744-4. Only such persons shall be eligible as county superintendents who shall have:

Who eligible  
as county  
superintend-  
ents.

(1) Five years' experience as superintendent and a high school life certificate; or

(2) Six years' experience in teaching, two years' additional experience in supervision, and at least a three-year county high school certificate; or

(3) Five years' experience as superintendent and a county high school certificate, and also be a graduate from a recognized institution of college or university rank; or

(4) Five years' teaching experience with one year's professional training in school administration and supervision in a recognized school of college or university rank, and a high school life certificate; or

(5) Five years' teaching experience with one year's professional training in school administration and supervision in a recognized school of college or university rank, and a county high school certificate, and be a graduate from a recognized institution of college or university rank.

HISTORY. — 104 v. 133 (143).

SECTION 4744-6. The county commissioners of each county shall provide and furnish offices in the county seat for the use of the county superintendent. Such offices shall be the permanent headquarters of the county superintendent and shall be used by the county board of education when in session.

Offices for  
county super-  
intendents and  
county board  
of education.

HISTORY. — 104 v. 133 (143).

County boards of education are not authorized to pay the expenses of teachers' meetings other than the required teachers' institute which must be held during a certain week.

Moneys illegally paid out by a board of education can be recovered from the members voting for such expenditure or from the persons receiving the same. Op. Atty. Gen. (1919), p. 464.

Under Section 4744-3a the county board of education may pay the actual and necessary expenses of the required educational meetings of the members of the board of education of the county school unit, provided for in Section 4747-1, G. C. Such expense may include printing, sending notices to members and rental of a place for meeting if such rental is absolutely necessary. Op. Atty. Gen. (1919), p. 866.

Bills for office supplies, stationary, etc., furnished to the county superintendent of schools, should be approved by the county board and paid out of the county board of education fund on the warrant of the county auditor. Op. Atty. Gen. (1915), p. 278.

The county board of education may allow a county superintendent an amount sufficient to cover the actual and necessary expense of maintaining and operating an automobile owned by him and used in the discharge of his duties, having due regard to the extent of such in public and private business. Op. Atty. Gen. (1915), p. 1260.

SECTION 5653. After paying all horse, sheep, cattle, swine, mule and goat claims at the December session of the county commissioners, if there remain more than one thousand dollars of the dog and kennel fund arising from the registration of dogs and dog kennels for such year the excess at such December session shall be transferred and disposed of as follows: in a county in which there is a

Distribution of  
surplus fund.



society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, which has one or more agents appointed in pursuance of law, or any other society organized as provided by sections 10062 to 10067, inclusive, of the General Code, that owns or controls a suitable dog kennel or place for the keeping and destroying of dogs which has one or more agents appointed and employed in pursuance of law, all such excess as the county commissioners deem necessary for the uses and purposes of such society by order of the commissioners and upon the warrant of the county auditor shall be paid to the treasurer of such society, and any surplus not so transferred shall be transferred to the county board of education fund at the direction of the county commissioners.

HISTORY.—R. S. § 2883; 74 v. 177, §§ 1, 3; 76 v. 85, § 14; 87 v. 160; 97 v. 275; 98 v. 87; 99 v. 484; 101 v. 107; 104 v. 133 (145); 107 v. 534 (537); 108 v. Pt. I 534 (537).

Under the provisions of Section 5653, General Code, as amended 104 Ohio Laws 145, in counties where no Society for the prevention of Cruelty to Animals and Children is incorporated and organized as provided by law, it is the mandatory duty of the county commissioners to transfer the surplus of the sheep funds in excess of \$1000.00 to the county board of education fund. State ex rel. v. County Commissioners, 94 O. S. 296.

The provisions of Section 5653, General Code, for the distribution by the county commissioners of a portion of the surplus from the sheep fund by transferring it to the Society for the Prevention of Cruelty to Children and Animals, is not an application of public funds for a private purpose, but is within the limitations of the state constitution in that respect. State ex rel. v. Struble, 15 O. N. P. (N. S.) 233.

Under the provisions of Section 5653, General Code, it is the mandatory duty of the county commissioners to transfer the surplus in the dog and kennel fund in excess of \$1000.00, to the county board of education fund in those counties in which there is no society for the prevention of cruelty to children and animals. Op. Atty. Gen. (1920), p. 366.

Where the board of county commissioners has transferred to the county board of education funds from the dog and kennel fund, such funds transferred vest in the county board of education and the board of county commissioners has no authority over such county board of education fund. Op. Atty. Gen. (1920), p. 366.

The county commissioners may not lawfully transfer from the general county fund, or from the proceeds of any other county tax levies to supply deficiencies in the county board of education fund, in case there is no money available in the sheep fund, under Section 5653, General Code, as amended. Op. Atty. Gen. (1914), p. 1206.

NOTE:—The following sections of the General Code indicate the purposes for which the county board of education fund can be drawn upon:

G. C. Sec. 4734, 4737, 4743, 4744-1, 4744-3, 4744-3a, 7642, 7654-1, 7654-3, 7654-5, 7860 and 7870. See Op. Atty. Gen. 1919, p. 1243.

The sources of revenue of the county board of education fund are provided for in the following sections of the General Code:

G. C., Sec. 4743, 4744-1, 4744-3, 5653 and 7820.

## CHAPTER 10

### BOARD OF EDUCATION OF SCHOOL DISTRICTS OTHER THAN COUNTY SCHOOL DISTRICTS

#### SECTION

- 4745. Beginning of terms of members.
- 4746. Oath of members of board of education and all other officers of school district.
- 4747. Organization of board and terms of president, vice-president and clerk.
- 4747-1. Annual meeting of all members for discussion of school matters.
- 4748. Vacancies in board, how filled.
- 4749. Corporate powers of board of education.
- 4750. Board to make rules and regulations; requisites of legal meetings of board.
- 4751. Special meetings of board, how called.
- 4752. Quorum of board; when ye and nay vote required; teachers and employes may be paid by payroll. When and how adoption of certain resolutions may be dispensed with.
- 4752-1. Board may require estimate from Superintendent and make annual appropriation.
- 4753. In absence of president or clerk, member to be chosen to act pro tempore.
- 4754. Record of meetings to be kept and read at succeeding meeting.
- 4755. Board authorized to accept gifts or endowments.
- 4756. Procedure with respect to sale of real property.
- 4757. Conveyances to be executed by president and clerk. Members not to have any interest in contracts of the board.

#### SECTION

- 4758. Exchange of real estate held by board for real estate held by municipal corporation.
- 14772. Exchange of lots in municipality donated or granted for school purposes; procedure.
- 14773. What petition in such case shall contain.
- 14774. Requirement as to publication of notice.
- 14775. Hearing by court upon petition; when exchange shall be authorized.
- 4759. School property exempted from taxation.
- 5334. Property passing to state or political subdivisions not subject to direct inheritance tax.
- 5349. School houses, public colleges and academies and land connected therewith exempted from taxation.
- 4760. How process against board of education served.
- 4761. Prosecuting attorney or solicitor to be counsel of school board.
- 4762. Officer having functions of prosecuting attorney or city solicitor to act as counsel for school board.
- 2918. Provision for other counsel for school board.
- 6444. Notice of filing petition for drainage.
- 6450. Resolution concurring in or opposing improvement.
- 6469. Proportionate assessment according to benefits.
- 6470. Schedule of lands benefited and percentage of benefit.
- 6494. Tax levy by board of education.
- 6862. Board of education may petition for road.

SECTION 4745. The terms of office of members of each board of education shall begin on the first Monday in January after their election and each such officer shall hold his office for four years except as may be specifically provided in chapter 2 of this title [G. C. §§ 4698 to 4707], and until his successor is elected and qualified.

Beginning  
of terms.

HISTORY.—R. S. § 3970-13; 97 v. 40, § 2; 103 v 275 (279).

This and other sections of the General Code enacted as a part of the Jung small school-board act were held to be constitutional. State ex rel, v. Evans 90 O. S. 243.

In the case of vacancies in a school board filled by appointment, section 10 of the General Code provides that a successor shall be elected for the unexpired term at first regular election for such office if such vacancy occurs more than thirty days before any election. Such appointee, however, has the same right as an elective officer to hold over until his successor is elected and qualified.

Under the provision of section 4748 G. C. a person elected by the board of education of a school district to fill a vacancy caused by the resignation of a member of such board, holds over for the unexpired term for which the member so resigning was elected and until his successor is elected and qualified. Op. Atty. Gen. (1915), p. 1566.

Members of boards of education in rural school districts are elected for the term of four years, except at the first election in a newly created district when two should be elected for two years and three for four years.

Boards of education should designate the number to be voted for, and if for different terms then the length of each term. Op. Atty. Gen. (1917), p. 1948.

Where an attempt was made to elect members of a school board at the November election in 1915, but said election was invalid the members of said board whose terms would have expired on the first Monday of January, 1916, will hold until their successors are elected at the November election in 1919, and begin their terms on the first Monday in January, 1920.

A vacancy does not occur in an office where there is an incumbent duly authorized to hold office and who is legally qualified to perform the duties thereof. Op. Atty. Gen. (1917), p. 1676.

Oath of members of board and other officers.

SECTION 4746. Before entering upon the duties of his office, each person elected or appointed a member of a board of education or elected or appointed to any other office under this title shall take an oath to support the constitution of the United States and the constitution of this state and that he will perform faithfully the duties of his office. Such oath may be administered by the clerk or any member of the board.

HISTORY.—R. S. § 3979; 71 v. 15, § 42.

Date of organization; regular meetings.

SECTION 4747. The board of education of each city, exempted village, village and rural school district shall organize on the first Monday of January after the election of members of such board. One member of the board shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. The president and vice-president shall serve for a term of one year and the clerk for a term not to exceed two years. The board shall fix the time of holding its regular meeting.

HISTORY.—R. S. §§ 3897a, 3911, 3920, 3933; 70 v. 195, § 21; 70 v. 195, § 31; 75 v. 120, § 3; 86 v. 346; 89 v. 93; 92 v. 149; 93 v. 46; 94 v. 305; 97 v. 340; 97 v. 342; 97 v. 347; 99 v. 105; 101 v. 138; 104 v. 133 (139); 109 v. 552.

The clerk of the board of education in a city school district having a director of schools does not issue warrants for claims against the board, and a clerk in the employ of the director has no discretion in issuing warrants for claims approved by the board. In city districts where there is no director, the clerk issues warrants for the payment of claims approved by the board, and such duty is one required by statute for him to perform and he has no right to refuse such performance. Op. Atty. Gen. No. 2918, March 9, 1922.

The clerk of a board of education is a public officer within the purview of the school laws and of section 8 General Code, and as such continues in office until his successor is elected or appointed and qualified. State ex rel. v. Coon, 4 O. C. C. (N. S.) 560.

The president of the board of education is an officer within the meaning of the statutes providing for his election and fixing his duties. State ex rel. v. Withrow, 11 O. C. C. (N. S.) 569, 81 O. S. 523.

Held that under the provisions of section 4747 and 4781 of the General Code provisions might be made for the payment of added compensation to the township clerk for his services as clerk of the township board of education. Op. Atty. Gen. (1912), p. 1394.



Held that by specific provision of section 4747 General Code, a member of a board of education may at the same time act as its clerk and receive compensation for both services. Op. Atty. Gen. (1912), p. 1776.

On consideration of the provisions of this section as amended 104 O. L. 139, and section 7705 G. C., as amended 104 O. L. 144, held that these sections prohibit a clerk of the board of education from being employed as a teacher by the board of which such teacher is the clerk. Op. Atty. Gen. (1914), p. 1478.

Held that a member of the General Assembly of Ohio cannot serve as a clerk of a village board of education of which he is a member, and receive a salary as such clerk. Op. Atty. Gen. (1915), p. 327.

The vice president of the board of education of a school district duly elected by the members of said board under authority and in compliance with the requirements of section 4747 G. C., as amended 104 O. L. 139, may act as president of said board and perform the duties of said office which has been vacated by the resignation of the president of said board from said office. Op. Atty. Gen. (1915), p. 1091.

A teacher may not, while employed by the board of education of the school district as a teacher in the schools of said district, be elected to the position of clerk of said board. Op. Atty. Gen. (1915), p. 2229.

The clerk of the board of education elected by said board at its meeting on the first Monday in January, under authority of section 4747 G. C., as amended in 104 O. L. 133, is required, before entering upon the duties of his office, to give a bond in an amount and with surety to be approved by said board, payable to the state, conditioned for the faithful performance of all the official duties required of him. The board of education in fixing the amount of said bond should take into consideration the added duties which the clerk is required to perform under provision of the latter part of section 4782 G. C., as amended 104 O. L., 158. Op. Atty. Gen. (1915), p. 2495.

Boards of education which fail to organize on the first Monday of January next after the election of members of such board as required by the provisions of section 4747 G. C. should organize as soon as the matter of their failure to organize on the statutory date is called to their attention.

The president and vice president of such boards hold over only until the boards of which they are members may reorganize. Op. Atty. Gen. (1917), p. 40.

See opinions of Attorney General as follows:

No. 1813, (1921), cited under Sec. 7694.

(1915), p. 2229, cited under Sec. 7786.

(1918), p. 223, cited under Sec. 7786.

SECTION 4747-I. Once each year all the members of the boards of education of the various village and rural school districts within any county school district shall hold a meeting for the purpose of discussing matters relating to the schools of such county school district. The county superintendent shall arrange for the time and place of holding such a meeting and shall act as chairman thereof. Each member of a rural and village board of education may receive the amount of two dollars for attending said meeting upon filing a certificate for attendance thereof with the board of which he is a member, this to be in addition to the allowance made rural board of education members under authority of section 4715.

Annual meeting of all members for discussion of school matters.

HISTORY.—104 v. 133 (139); 108 v. Pt. I 704 (708).

A county board of education, through its superintendent, has full authority to arrange for the time and place of holding the an-

nual meeting of members of the board of education of the various village and rural school districts of the county, including the rental of a proper place for such meeting if necessary. Op. Atty. Gen. (1919), p. 864.

Vacancies in  
board, how  
filled.

SECTION 4748. A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy.

HISTORY.—R. S. § 3981; 70 v. 195, § 43; 88 v. 54; 89 v. 95; 93 v. 48; 97 v. 355; 99 v. 51.

This section is cited and applied in the case of *Thompson v. State*, 92 O. S. 284.

In a case involving the right of a board of education to remove one of its members under this section, it appeared that the regular meetings of the board were held on the second Tuesday of each month. The member in question was present at the regular meeting of the board October 8, 1917. No subsequent meeting of the board was held and none called until the second Tuesday in November, 1917. The member was absent from that meeting. The next meeting was held on the second Tuesday in December, 1917. The member was absent from that meeting, at which there was no quorum only one member being present. The member attended the next meeting, which was January 8, 1918. Held, that his absence did not date from October 8, 1917, and that he was not in default until the second Tuesday in November, at which time the ninety days prescribed by statute began to run; and that the board of education had no authority to adopt a resolution on January 17, 1918, removing such member from the board of education. *State ex rel. v. Eikenberry*, 99 O. S. 32.

The provision of section 4748 General Code that upon the resignation of a member of a board of education such vacancy shall be filled by the board at its next regular meeting is directory and not mandatory. A vacancy so created may be filled at the same meeting at which the member resigns. *State ex rel. Hensing*, 10 App. 205.

Where a member of the board of education was elected in 1917 for a term of four years beginning January 1, 1918, and resigned after qualifying for said office, the board was authorized under G. C., Sec. 4748, to fill said vacancy by appointment for the unexpired term. Said appointment having been made the appointee is entitled to serve until January, 1922. Op. Atty. Gen. (1920), p. 78.

The removal from a city school district, indefinitely, of a member of a board of education creates a vacancy on said board. Op. Atty. Gen. (1914) p. 819.

A person elected by the board of education of a school district under the provisions of section 4748 G. C., to fill a vacancy caused by the resignation of the member of such board, holds over for the unexpired term for which the member so resigning was elected, and until his successor is elected and qualified. Op. Atty. Gen. (1915), p. 1556.

A vacancy does not occur in the office of the member of a board of education where there is an incumbent of such office who is duly authorized to hold over and who is legally qualified to perform the duties of the office. *Op. Atty. Gen.* (1917), p. 1676.

Under section 4748 G. C., in cases where the board of education elects persons to fill vacancies in the board, these persons so elected will hold over for and during the term for which the members, in whose places they were appointed, would have held under their election. In such cases section 10 G. C. applies. *Op. Atty. Gen.* (1917), p. 2420.

Two new members of the board of education of a township rural school district were elected at the November election. One of the retiring members ran for re-election, but was defeated. The other retiring member did not run for re-election. One of the two new members moved away and did not qualify. Held that a vacancy exists in the board of education and that the same should be filled by the board as provided in section 4748 G. C. *Op. Atty. Gen.* (1918), p. 356.

If a member of the board of education of a city school district removes from the city a vacancy is thereby caused in the board which should be filled under the provisions of section 4748 G. C. *Op. Atty. Gen.* (1918), p. 1652.

Under section 4748 G. C. a board of education cannot fill a vacancy in the board caused by the resignation of a member at the same meeting at which it accepts such resignation. *Op. Atty. Gen.* (1919), p. 877.

See opinions of Attorney General, No. 2447 (1921), cited under Sec. 7764-1.

**SECTION 4749.** The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state.

Corporate  
powers of  
board of  
education.

**HISTORY.**—R. S. § 3971; 85 v. 133; 80 v. 36; 70 v. 195, § 37; S. & C. 1350.

As to penalty for members of board of education receiving compensation, see G. C. § 12883.

As to authorizing the use of schoolhouses for literary entertainments, school exhibitions, singing schools and religious exercises, see G. C. § 7622.

Where no obligation, legal or moral, rests upon a board of education to pay a claim asserted against it by a private individual, an act of the general assembly procured by the claimant, commanding such board to levy a tax for its payment is unconstitutional and void. *Board of Education v. State*, 51 O. S. 531.

A board of education may sue its treasurer for money received and not accounted for. *Board of Education v. Milligan*, 51 O. S. 115.

School property is not liable to assessment for a street improvement, nor can a judgment be rendered against a board of education for the payment of the assessment out of its contingent fund. *Toledo v. Board of Education*, 48 O. S. 83; *Board of Education v. Toledo*, 48 O. S. 87.

The legislature having placed the management of the public schools under the control of directors, trustees, and boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given, or what books shall be read therein. *Board of Education v. Minor*, 23 O. S. 211.



The board of education is made by the statute a body corporate, and the contracting of a debt by the board, and the directing the issuing of an order to pay it, are corporate actions which cannot be performed by the individual members of the board acting separately. *State ex. rel. v. Treasurer of Liberty Township*, 22 O. S. 144.

When the legally constituted counsel of a public board refuse to resist an action in which the board is vitally interested and special counsel are employed to make the necessary defense, the board, rather than its members in their individual capacity, will be held liable for the fees of such counsel, particularly where no bad faith is shown and the members of the board serve without compensation. *Board of Education v. Board of Education*, 17 O. N. P. (N. S.), 439.

*Affirmed Board of Education v. Board of Education*, 22 C. (N. S.).

A board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating such liability. *Finch vs. Board of Education*, 30 O. S. 37, 46.

A lease of a public school house for the purpose of having a private or select school taught therein for a term of weeks, is in violation of the trust for which such school house is held by the board of education; and such use of the school house may be restrained through the suit of a resident tax payer of the district. *Weir v. Day*, 35 O. S. 143.

A board of education is not liable in its corporate capacity for damages, where, in excavating on its own lots for the erection of a school building, it wrongfully and negligently carries the excavation below the statutory depth of 9 feet, thereby undermining and injuring the foundations and walls of a building belonging to an adjoining owner. *Board of Education v. Volk*, 72 O. S. 469.

Pursuant to statutory provisions authorizing and empowering the board of education of a school district to make and enforce rules and regulations to secure the vaccination of pupils attending or eligible to attend the schools of the district, such board of education, in the exercise of a sound discretion, may exclude from the public schools all children who have not been vaccinated. *State ex rel. v. Board of Education*, 76 O. S. 297.

An agreement by members of a township board of education, acting in their individual capacity, to purchase from another person apparatus for the schools of the township, and to ratify said contract of purchase at the next meeting of the board, is contrary to public policy, and therefore is illegal and void. *McCortle v. Bates*, 29 O. S. 419.

A board of education is liable for injury resulting from the wrongful acts of its servants in the performance of a purely ministerial act where the wrongful act was the proximate cause of the injury and without fault on the part of the injured person. *McHenry, J. v. The Board of Education of Cincinnati*, 14 Ohio App. (Decided Jan. 7, 1921.)

Members of a board of education are not officers or trustees of the "state, county, township or municipal corporation" within the contemplation of section 17 General Code and are not personally liable under the provisions thereof in the making of a contract without an appropriation having first been made therefor as required by section 5660, General Code. *Dayton v. Thomas*, 20 O. N. P. (N. S.) 539.

A board of education is authorized to accept a bequest to be used in the erection and maintenance of a building to be used jointly for a public library and Young Men's Christian Association. *Blume v. Thompson*, 15 O. N. P. (N. S.) 97.

The public sale of land by a township board of education which land has been conveyed to such board, its successors and assigns, for a valuable consideration, for use for school purposes

only, is not in violation of the terms of the grant to the board of education. *Taylor v. Binford*, 37 O. S. 262.

The authority reposed in a board of education by section 7620, General Code, will not be interfered with by the courts and the selection of a locality at the time the bond issue was submitted to popular vote does not limit the board's power to select a different site for a centralized school. *State v. Jefferson School District*, 30 O. C. A. 365, 11 App. 146.

Even though an obligation against a board of education is not enforceable at law, by reason of failure in the observance of statutory requirements when the same is incurred, the board of education is nevertheless authorized to pay the same as a moral obligation, and the courts will not interpose by injunction to prevent the board of education from paying said obligation if it desires to do so. *Bower v. Board of Education*, 8 O. C. C. (N. S.) 305, 78 O. S. 443; *State ex rel. Board of Education*, 11 O. C. C. 41, 53 O. S. 656.

In the case above cited it was held that the board of education of Cincinnati school district was liable in damages to a pupil of one of the schools of said district for the act of a dentist employed by the board of education, who carelessly and negligently extracted one of the teeth of a pupil who was required by the principal of the school to submit himself to such dentist for the purpose of having his teeth treated. In reaching this conclusion the Court of Appeals of Hamilton County has departed from the established doctrine of non-liability recognized by the Supreme Court in the earlier cases cited under this section of the General Code, and followed the principle of municipal liability declared by the Supreme Court in the later case of *Fowler v. Cleveland*, 100 O. S. 158.

Under the authority of sections 4749 and 7620 G. C., a board of education may legally construct a foot bridge upon a strip of land in which a right of way for a walk has been deeded to it, and a condition in the deed for such right of way providing for its use by the board of education in common with the grantor of such right of way does not invalidate the power and authority of the board of education to construct such foot bridge. *Op. Atty. Gen.* (1912) p. 1842.

Held upon consideration of section 4749 G. C. and cognate sections that a board of education has no power to lease any part of real property acquired and possessed by it which is not used or needed for school purposes. *Op. Atty. Gen.* (1913), p. 1508.

The board of education of a school district, acting under authority of section 4749 G. C., may determine by resolution that certain real property which said board owns in fee is not needed for school purposes and that it is for the best interest of the school district to sell the same; and if the value of said property is less than \$300 the provisions of section 4756 G. C., as amended 103 O. L. 536, are not applicable to the sale of said property, and the same may be disposed of at private sale. *Op. Atty. Gen.* (1915) p. 877.

If the board of education of a township rural school district, on consolidating the schools of such district at two points within the township, finds that the most convenient location for one of the buildings is within the limits of the village school district located within said township, said board of education may, under authority of section 4749, own school property within the limits of said village school district for the purpose of operating one of its schools under said plan of consolidation. *Op. Atty. Gen.* (1916), p. 13.

Held that a board of education has no authority to purchase a site for and erect a school building outside of its district. *Atty. Gen.* (1917), p. 753.

The board of education of a rural school district may not expend the funds of the district in acquiring a right of way thru private property for the use of pupils residing in the district and living more than two miles from the nearest school in said district, for the purpose of relieving itself of the duty of providing trans-

portation for such pupils under the provisions of section 7731 G. C., 104 O. L. 140. Op. Atty. Gen. (1916), p. 930.

A board of education may when acting in good faith compromise a claim and justly and legally do it. Op. Atty. Gen. (1917), p. 286.

A board of education in securing a site for a school building is not authorized by statute to employ a person to secure options at a rate per cent commission on the purchase price. Op. Atty. Gen. (1918), p. 478.

A board of education of a rural school district has no power to lease grounds owned by it to others for oil or gas purposes. Op. Atty. Gen. (1918), p. 1354.

A board of education has no power to use school funds to erect a residence for the superintendent and teachers of its schools, nor has the board of education a right to remodel one of its old buildings as a residence for such superintendent and teachers. Op. Atty. Gen. (1919), p. 1326.

Under the incidental or implied powers of a board of education it may purchase or subscribe for a journal relating to school board work and pay for the same out of the school funds. However, such powers do not permit it to subscribe for such publications for the individual members of the board and such publications should relate to school board work. Op. Atty. Gen. (1920), p. 229.

See opinions of Attorney General as follows:

No. 2140 (1921), cited under Sec. 4756.

No. 2191 (1921), cited under Sec. 7620.

No. 2247 (1921), cited under Sec. 7764-1.

No. 2753 (1921), cited under Sec. 7620.

Board may  
make rules;  
legal meetings.

**SECTION 4750.** The board of education shall make such rules and regulations as it deems necessary for its government and the government of its employes and the pupils of the schools. No meeting of a board of education, not provided for by its rules or by law, shall be legal, unless all the members thereof have been notified, as provided in the next section.

**HISTORY.**—R. S. § 3985; 70 v. 195, § 54; 97 v. 356.

The statutes of the State relating to education which give the control and management of the public schools to boards of education of the several districts, authorize such boards to establish rules and regulations for the government of the schools, and, so far as the rules so established are reasonable, and fairly calculated to enforce good government and promote the ends of education, they will be sustained by the courts.

A pupil who has favorably passed his examination and has been given a proper certificate, pursuant to regulations of the board, authorizing him to enter the next higher grade, is without right, in the absence of authority from the board of education, to omit such grade to which he has been promoted and pass to a higher one. Board of Education vs. Wickham 80 O. S. 133.

A board of education may pass a resolution refusing to employ a teacher affiliated with a labor union federation. Frederick v. Owen, 25 O. C. D. 538.

The courts have no authority to interfere with a regulation adopted by a school board requiring the reading of the Bible as an opening exercise in school. Nessel v. Humm, 1 O. N. P. 140.

A resolution passed by a school board prohibiting the reading of the Bible and prayer or other religious instruction in the school cannot be reviewed by the courts. Board of Education v. Paul, 7 O. N. P. 58; Board of Education v. Minor, 23 O. S. 211.

Where instruction in rhetoric was given in a grade or department of a school, and one of the rules adopted by the board



of education for the government of the pupils therein provided that if any pupil should fail to be prepared with a rhetorical exercise at the time appointed therefor, he or she should, unless excused on account of sickness or other reasonable cause, be immediately suspended from such department. Held, that such a rule was reasonable, and that neither the teacher of such department nor the board of education was liable in damages for a suspension by the teacher of a pupil for failing to comply with said rule. *Sewell v. Board of Education*, 29 O. S. 89.

This section does not authorize the board of education of a school district to make a rule imposing upon the clerk of the board the duty of receiving tuition funds belonging to the board; and the sureties upon such clerk's bond are not liable for his misappropriation of such funds. *State v. Griffith*, 74 O. S. 80.

By virtue of section 4750 G. C. the board of education may pass rules and regulations for the government of its pupils, and has the right to suspend pupils for violation of such rules subject to the restrictions of section 7685 G. C.

Where therefore a pupil has partaken in a proceeding in which a teacher was hung in effigy, the board may suspend such pupil by a two-thirds vote for reasonable time not exceeding the limit of the current school year after permitting the parent or guardian of the offender to be heard. *Op. Atty Gen.* (1912), p. 1214.

Held upon consideration of this section and of section 7681 G. C., 106 O. L. 489, that a board of education may adopt reasonable rules and regulations prescribing the time at which pupils who arrive at the age of six years after the beginning of the school year may enter upon the first year's work of the elementary schools. *Op. Atty Gen.* (1916), p. 1598. See *Op. Atty. Gen.* (1911), p. 1018.

Held upon a consideration of the provisions of this section and those of section 4751 G. C., that proceedings of the board of education relating to the adoption by such board of the resolution providing for the submission of a bond issue proposition to the electors of the school district were invalid where one of the members of the board was absent and no notice of the meeting had been served in accordance with the provisions of section 4751 G. C. *Op. Atty Gen.* (1917), p. 649.

Under sections 4750 and 4751 a bond issue by the board of education of the school district is invalid where the resolution providing for the submission of said proposition was adopted at a special meeting of the board without written notice having been served on the members. *Op. Atty. Gen.* (1917), p. 696.

A board of education has a right to make a rule granting teachers three days' absence on account of the death and burial of members of their immediate families, or one day for more remote relatives, without deduction of pay. The board can pay a substitute during such absence.

A board of education has a right to establish a rule granting teachers the difference between their salaries and those of substitutes for not to exceed forty days in any one school year when they are absent because of personal illness and when such illness is certified to by a physician in good standing.

The board of education has a right to make a rule permitting the teacher to visit other schools for two days a year without deduction of pay, provided such visit be in the furtherance of the means of education and not for the personal benefit of the teacher, and the board can pay a substitute to teach in the place of such teacher during such absence.

A board of education has the right to grant a teacher three half days to attend teachers' examinations, the above being for the sole benefit of the teacher.

The board of education has no right to grant teachers permission to attend an educational convention or conference and cannot pay a substitute in such absence.

A board of education has the right to assign the superintendent, directly or indirectly, to investigate and report on methods of work, equipment and results obtained in other school systems. Such assignment can be made with pay and actual travelling expenses and the board can pay a substitute during such absence. *Op. Atty. Gen.* (1917), p. 862.

The board of education of a school district is without authority in law: (1) to send a teacher in the employ of said board to a continuation school or to a university and pay a part or all of said teacher's salary and expenses while attending said continuation school or university; (2) to send said teacher into the schools of another state or county in exchange for the services of a teacher to be sent into said district from such other state or county; (3) to make an allowance to a teacher, in addition to a salary, for successfully maintaining a school children's savings bank.

A board of education of a city school district may establish and maintain an elementary school in a general city hospital and contract with a teacher to give instruction in branches mentioned in Section 7648 G. C. to children who are residents of said city district and who are confined to said hospital. *Op. Atty. Gen.* (1916), p. 122.

The provisions of this section and of Section 4751 of the General Code seem to require that notice of a called meeting of a board of education be given in writing as provided in Section 4751, whether the board has previously adjourned to meet at the call of the president or not. *Op. Atty. Gen.* (1919), p. 638.

See Opinions of Attorney General as follows:

No. 2352 (1921) cited under Sec. 7690;

No. 2753 (1921) cited under Sec. 7620;

(1918), p. 85, cited under Sec. 7877.

Special meeting of the board.

**SECTION 4751.** A special meeting of the board of education may be called by the president or clerk thereof or by any two members, by serving a written notice of the time and place of such meeting upon each member of the board either personally or at his residence or usual place of business. Such notice must be signed by the official or members calling the meeting.

**HISTORY.**—R. S. § 3978; 70 v. 195, § 43; 89 v. 95; 93 v. 47; 97 v. 355.

If at a regular meeting a board of education adjourns to meet at a certain time, and copies of the minutes of such meeting are mailed to every member of the board at his proper address, it will be presumed that each member had notice of such meeting. *State, ex rel., vs. Evans*, 90 O. S. 243.

Proceedings of a school board providing for an issue of bonds are invalid, where the action pertaining thereto was taken at a special meeting of the board from which one member was absent, and no written notice of the meeting had been served on each member of the board, either personally or at his usual place of business. *Kattman vs. Board of Education*, 15 O. C. C. (N. S.) 232.

Held upon a consideration of the provisions of this section and those of Section 4751 G. C., that proceedings of the board of education relating to the adoption by such board of the resolution providing for the submission of a bond issue proposition to the electors of the school district were invalid where one of the members of the board was absent and no notice of the meeting had been served in accordance with the provisions of Section 4751 G. C. *Op. Atty. Gen.* (1917), p. 649.

Under Sections 4750 and 4751 a bond issue by the board of education of the school district is invalid where the resolution providing for the submission of said proposition was adopted at a special meeting of the board without written notice having been served on the members. *Op. Atty. Gen.* (1917), p. 696.

The provisions of this section and of Section 4751 of the General Code seem to require that notice of a called meeting of a board of education be given in writing as provided in Section 4751, whether the board has previously adjourned to meet at the call of the president or not. Op. Atty. Gen. (1919), p. 638.

A special meeting of a board of education can be legally called only by the service of the notice thereof on the members in the manner provided in Section 4751 G. C.; and proceedings of such board providing for an issue of bonds of the school district are invalid where action pertaining thereto was taken at a special meeting from which one member was absent, where no written notice of the meeting had been served on each member of the board in the manner provided in said section. Op. Atty. Gen. (1917), p. 2021.

See Opinions of Attorney General No. 2918 (1922), cited under Sec. 4747.

SECTION 4752. A majority of the members of a board of education shall constitute a quorum for the transaction of business. Upon a motion to adopt a resolution authorizing the purchase or sale of real or personal property or to employ a superintendent or teacher, janitor or other employee or to elect or appoint an officer or to pay any debt or claim or to adopt any text book, the clerk of the board shall publicly call the roll of the members composing the board and enter on the records the names of those voting "aye" and the names of those voting "no." If a majority of all of the members of the board vote aye, the president shall declare the motion carried. Upon any motion or resolution, a member of the board may demand the yeas and nays, and thereupon the clerk shall call the roll and record the names of those voting "aye" and those voting "no." Each board may provide for the payment of superintendents, teachers and other employes by payroll, if it deems advisable, but in all cases such roll call and record shall be complied with; provided, that boards of education of township school districts may provide for the payment of teachers monthly if deemed advisable upon the presentation, to the clerk, of a certificate from the director of the subdistrict in which the teacher is employed, stating that the services have been rendered and that the salary is due; the adoption of a resolution authorizing the clerk to issue warrants for the payment of the teacher's salary on presentation of such certificates shall be held as compliance with the above requirements, provided, however, that whenever a board of education of a city school district by a majority vote of its members has adopted an annual appropriation resolution, as hereinafter provided, then such board may, by general resolution, dispense with the adoption of resolutions authorizing the purchase or sale of property, except real estate, the employment, appointment or confirmation of appointment of janitors, truant officers, superintendents of building or other employes, except teachers, the payment of debts or claims, the salaries of superintendents, teachers or other employes, if provision therefor is made in such annual appropriation resolution, or approving warrants for the payment of any claim from the school fund, if the expenditure for which

Quorum; when "yea" and "nay" vote required.

Teachers and employes may be paid by payroll; procedure.

When and how adoption of resolutions may be dispensed with.



such warrant is issued, is provided for in such annual appropriation resolution.

HISTORY.—R. S. § 3982; 71 v. 15, § 42; 97 v. 356; 101 v. 316; 107 v. 46.

Where the minute books containing a record of the proceedings of the board of education, showed that all members of the board were present; that a motion to proceed to the election of teachers was carried by a unanimous vote; and that an applicant for a position to teach was declared elected by a unanimous vote, but that the clerk did not call the roll of the members, and the names of those voting aye were not entered on the record, the requirement of the statute was not sufficiently complied with, and the election was invalid. Board of Education vs. Best, 52 O. S. 138; Board of Education vs. Brown, 81 O. S. 528.

Without any agreement with the board of education therefor, a teacher performed services as a janitor in connection with his school duties; and having dismissed school on certain holidays during the school term, he substituted and taught other days upon requirement of the board to make up for said holidays. Held, that such teacher could not recover as upon a quantum meruit for the janitor services, nor for the prorated amount of his stipulated monthly salary for the excess days he taught. Board of Education vs. Parker, 21 O. C. C. (N. S.) 280.

A majority of the members of a board of education constitute a quorum for the transaction of the ordinary business of the board; and the affirmative vote of a majority of such quorum is sufficient to carry propositions other than those, which under Section 4752 or other sections of the General Code require the affirmative vote of a majority or larger vote of the entire membership of the board. State, ex rel., vs. Evans, 90 O. S. 243, 250, 251.

The legal adoption of a resolution by a board of education to employ a school superintendent can only be adopted by the entry upon the minutes of the names of the members of the board voting aye, and names of the members voting nay, as required by this section. A statement in the minutes of the board that all the members were present at roll-call, and later on that all voted aye on the question, is not a compliance with this statute.

A clerk of a board of education cannot by his own action, after the expiration of his term, lawfully correct his official entries in public records. Beck vs. Board of Education, 9 O. C. C. (N. S.) 551; 76 O. S. 587.

There is but one method for the legal adoption of books for use in the public schools and that is the method provided in Section 4752 G. C. Op. Atty. Gen. (1919), p. 1443.

See Opinions of Attorney General No. 1813 (1921), cited under Sec. 7694.

See Opinions of Attorney General No. 3140 (1922), cited under Sec. 7690.

See Opinions of Attorney General (1919), p. 187, cited under Sec. 7830.

Board may require estimate from superintendent and director; annual appropriation.

SECTION 4752-I. At any meeting prior to September 15 of the school year, the board of education of a city school district may by vote of the majority of its members, adopt a resolution requiring the superintendent and the director or other officer having the power and duties of a director to prepare and submit to the board by a certain date an estimate of the expense of conducting the affairs of the board of education for the following school year. Such estimate shall set forth such items, schedules and information as may be required by the board of education in such resolution. The board at any meeting prior to December 1 of the school year may by a majority vote of its members

pass an annual appropriation resolution based upon the estimates so furnished. Such appropriation resolution shall set forth, classified under appropriate headings, the purposes of expenditures and the amount appropriated for each purpose.

HISTORY.—107 v. 46 (47).

See Opinions of Attorney General No. 2918 (1922), cited under Sec. 7696.

SECTION 4753. If the president or clerk is absent at any meeting of the board of education, the members present shall choose one of their number to serve in his place pro tempore. If both the president and clerk are absent, both places shall be filled. On the appearance of either at the meeting after his place has been so filled, he shall immediately assume the duties of his office.

Absence of president or clerk.

HISTORY.—R. S. § 3983; 70 v. 195, § 31.

Held, that upon consideration of the provisions of this section and of Section 4747 G. C., as amended 104 O. L. 139, the vice president of the board of education of a school district, duly elected by the members of said board, under authority and in compliance with the provisions of Section 4747 G. C., may act as president of said board and perform the duties of said office which has been vacated by the resignation of the president of said board from said office. Op. Atty. Gen. (1915), p. 1091.

SECTION 4754. The clerk of the board of education shall record the proceedings of each meeting in a book to be provided by the board for that purpose, which shall be a public record. The record of proceedings at each meeting of the board shall be read at its next succeeding meeting, corrected, if necessary, and approved, which approval shall be noted in the proceedings. After such approval, the president shall sign the record and the clerk attest it.

Record of proceedings and attestation thereof.

HISTORY.—R. S. § 3984; 70 v. 195, § 29; 71 v. 15, § 42.

Where a board of education, at a regularly called meeting, makes a contract with a qualified teacher, but no record is made of the proceedings, the teacher may prove by competent parol evidence such official action of the said board. Dixon vs. Sub-district, 3 O. C. C. 517.

See Beck vs. Board of Education, 9 O. C. C. (N. S.) 551, 76 O. S. 587; McCortle vs. Bates, 29 O. S. 419.

SECTION 4755. By the adoption of a resolution, a board of education may accept any bequest made to it by will or may accept any gift or endowment from any person or corporation upon the conditions and stipulations contained in the will or connected with the gift or endowment. For the purpose of enabling the board to carry out the conditions and limitations upon which a bequest, gift or endowment is made, it may make all rules and regulations required to fully carry them into effect. No such bequest, gift or endowment shall be accepted by the board if the conditions thereof shall remove any portion of the public schools from the control of such board.

Boards may accept bequests.

HISTORY.—R. S. § 3975; 73 v. 205, § 2; 97 v. 355.

Under the authority of section 4755 General Code a board of education may accept a bequest made to it by will for school purposes.

poses. Such bequest is a trust for charity, and should be liberally construed to the end that the intention of the donor may be carried out. *Rockwell vs. Blaney*, 9 O. N. P. (N. S.) 495.

A board of education is authorized to accept a bequest to be used in the erection and maintenance of a building to be used jointly for a public library and a Young Men's Christian Association. *Blume vs. Thompson*, 15 O. N. P. (N. S.) 97.

Where the incorporators of a village dedicate certain specified lots therein "for school purposes, and on which to erect school houses", it was held that the dedication was for a specific use, and conferred no power of alienation so as to extinguish the use. If the use created by the dedication were abandoned and should become impossible of execution, the premises would revert to the dedicators or their representatives, and without their consent they could not be divested of their contingent right of reversion by an absolute alienation. *Board of Education vs. Edson*, 18 O. S. 221.

Lands deeded to a board of education to be used for school purposes, with an express condition of reverter upon abandonment of such use, revert to the grantor or his heirs.

Lands deeded to a board of education "so long as used for school purposes" revert automatically to the heirs of the grantor upon abandonment for school purposes, without an express condition of reverter in the deed. The board of education in such case takes only a qualified or limited fee, terminating when the stipulated use ceases. The centralization of the township school district and the consequent abandonment of lands used for sub-district schools, does not prevent the reverter nor continue the limited estate.

Where a board of education, having a conditional or limited estate in lands, erects buildings and improvements thereon to adapt them to such special uses, and thereafter abandons the specified uses, such board of education within a reasonable time after such abandonment may remove the said buildings and improvements. *May vs. Board of Education*, 12 App. 456; *Phillips vs. Board of Education*, 12 App. 456.

C., being the owner of land, conveyed it for a valuable consideration to a township board of education, its successors and assigns for the use of school purposes only. Afterward, the board, wishing to change the school-house site, sold the land at public outcry to T. C., having conveyed to B, entered—under his permission—as upon condition broken. In an action of trespass by T. against C.: held, that the entry of C was unlawful, the sale to T not being in violation of the terms of the grant to the board of education by which the estate was expressly made assignable. *Taylor vs. Binford*, 37 O. S. 262.

How real  
property may  
be sold.

SECTION 4756. When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best. Provided, however, that in case the board of education decides to dispose of such real property, it may sell and convey the same to any municipality or board of trustees of the school district library in which such real estate is situated upon such terms and conditions as may be agreed upon. The president and secretary of the board shall execute and de-



liver deeds necessary to complete the sale or transfer provided for by this section.

HISTORY.—S. & C. 1350; R. S. § 3971; 70 v. 195, § 37; 80 v. 36; 85 v. 133; 103 v. 536.

Held upon consideration of the provisions of this section and of section 4749 G. C. which enumerates the powers of a board of education with reference to acquiring, holding, possessing and disposing of real and personal property that such board has no power to lease to others real property acquired and possessed by it which is not used for school purposes. Op. Atty. Gen. (1913), p. 1508.

The board of education of a school district, acting under authority of Section 4749 G. C. may determine by resolution that certain real property which said board owns in fee is not needed for school purposes, and that it is for the best interest of the school district to sell the same; and if the value of said property is less than \$300 the provisions of Section 4756 as amended 103 O. L. 536 are not applicable to the sale of said property and the same may be disposed of at private sale. Op. Atty. Gen. (1915), p. 877.

Transferred property may be sold by the board of education of the school district to which such territory was transferred, but such real or personal property to be sold must be offered in the manner provided in G. C. Sec. 4756. Op. Atty. Gen. (1920), p. 67.

A board of education desiring to dispose of real estate valued in excess of three hundred dollars at public auction under the provisions of section 4756 G. C., is not compelled to dispose of the property offered to the highest bidder, and the board of education in its notice of sale may reserve the right to reject any or all bids. Op. Atty. Gen., No. 2140, June 6, 1921.

See Opinions of Attorney General No. 1865 (1921), cited under Sec. 7730-1.

SECTION 4757. Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board.

Conveyance  
and con-  
tracts.

HISTORY.—R. S. § 3974; 70 v. 195, §§ 31, 33.

A sale of goods by a partnership to a board of education where one of the members of the partnership is a member of the board of education, is void; and any resident tax-payer of the school district may maintain an action to restrain the board of education and its treasurer from paying anything on such contract. Grant vs. Brouse, 1 O. N. P. 145.

Inasmuch as it is mandatory upon the board of education to place the deposits in the bank offering the highest rate of interest for the same, members of the board who are stockholders in, or officers of, the bank making the highest bid, are not criminally liable for making such bank the depository. Op. Atty. Gen. (1912), p. 1246.

Held that a board of education may enter into a contract with a retired member thereof for installing steam heating equipment in a school building maintained by such board of education. Op. Atty. Gen. (1912), p. 1083.

The president of a board of education who is also a director and stockholder of a building material company, which company sells building material to the principal contractor dealing with said board of education, has such an interest in said contract as is

prohibited by Section 4757 G. C. No criminal liability is attached to a violation of Section 4757 G. C., but this section does affect the validity of contracts. Op. Atty. Gen. (1915), p. 267.

A member of a board of education who is owner and publisher of a newspaper has no right to contract with the board for the publication of legal notices, even though only the legal rate is charged for such publication. Op. Atty. Gen. (1917), p. 1293.

A member of a board of education cannot have any interest in a contract for the transportation of pupils with the board of which he is such member.

One who has the contract for transportation with the board of education relinquishes his interest in such contract when he qualifies and takes his place on such board after being elected thereto. Op. Atty. Gen. (1918), p. 20.

Where a member of a board of education is also a director and stockholder of a bank, which bank, with two other banks, has bid the same and highest rate of interest for the deposit of the funds of such board of education, such funds should be apportioned between the three banks offering such highest rate of interest. Such award would not be invalid under Section 4757 G. C., because of the interest of the member of the board of education.

Where a board of education enters into a contract for the loan of money from a bank and thereafter a director of such bank becomes a member of the board of education such contract does not become invalid under the provisions of Section 4757 G. C. Op. Atty. Gen. (1918), p. 337.

A member of a board of education cannot be employed by such board as a teacher, and any such contract made by the board is null and void.

The president of a board of education who is under contract with such board as a teacher can legally cast a vote for district superintendent, but his contract as a teacher is null and void. Op. Atty. Gen. (1919), p. 761.

Where the wife of a member of a board of education appears as a party to a contract with such board of education, such contract is in violation of G. C. Sec. 4757 and is null and void. Op. Atty. Gen. (1920), p. 1143.

Exchange of  
real estate.

SECTION 4758. Upon a vote of a majority of the members of a board of education and a concurring vote of the council of a municipal corporation, declaring that an exchange of real estate held by such board for school purposes for real estate held by such municipal corporation for municipal purposes will be mutually beneficial to such school district and municipal corporation, such exchange may be made by conveyances, executed by the mayor and clerk of the corporation and by the president and clerk of the board of education, respectively.

HISTORY.—R. S. § 3971; 1888, March 30; 85 v. 133; 80 v. 36; 70 v. 195, § 37; S. & C. 1350.

Exchange of  
lots for school  
purposes  
authorized.

SECTION 14772. *Be it enacted by the General Assembly of the State of Ohio*, That in any and all cases when any lot or lots of land lying within the limits of any town or village shall have been dedicated, given, or granted to such town or village, and set apart for the use and support of schools, it shall be competent for the several courts of common pleas of this state, on application of the mayor or council of any village, where such lot or lots are situate, to authorize an exchange of such lot or lots for such other lot or lots within the limits of such village as the interest of

the schools therein may seem to require. And all lots taken in exchange as aforesaid, shall be held for the same purposes and subject to the same conditions as the original lots dedicated, given or granted to said town or village for the use and support of schools.

HISTORY.—70 v. 193.

SECTION 14773. That every application for an exchange of lots as aforesaid, shall be by petition verified by the mayor, and the board of education of said town or village shall be made a party defendant, and such other persons as the court may order, and shall set forth an accurate description of each and all lots proposed to be given or taken in exchange, and shall set forth the specific circumstances which render such exchange necessary, and a prayer for such order as may be required.

Terms of application for exchange.

HISTORY.—70 v. 193.

SECTION 14774. That notice of the filing, pendency, and prayer of such petition shall be published for four consecutive weeks, prior to the day of hearing, in some newspaper printed in such village, if there be any printed therein, and if there be not, in some newspaper printed in the county, and of general circulation in such village.

Notice thereof to be published.

HISTORY.—70 v. 193.

SECTION 14775. If upon the hearing of such petition it shall appear to the court that notice of the filing, pendency, and prayer of such petition has been given as hereinbefore required, and that such an exchange of lots is necessary and will promote the interests of schools in such village, and that such an order would not be inconsistent with the terms and conditions of the original grant or devise, then the court shall authorize such exchange to be made, and order the mayor of such village to execute and deliver such deed or deeds in fee simple as may be necessary to effect such exchange.

Consummation of the exchange.

HISTORY.—70 v. 193.

SECTION 4759. Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution.

School property exempt from taxation.

HISTORY.—R. S. § 3973; 70 v. 195, § 72.

A board of education is not a tax-payer; taxes may be levied for its benefit, but it pays none. Board of Education vs. Gay, 64 O. S. 434, 445.

School property is not rendered liable to assessment for a street improvement by reason of the fact that with knowledge that the property was not liable to assessment the board petitioned for the improvement.

But where the lien of an assessment for a street improvement has already attached, it will not be defeated by the subsequent purchase of the property by a school board. Board of Education vs. Bowland, 3 O. N. P. (N. S.) 122.



The term taxation as used in the first part of Section 4759 G. C. does not include "assessments," the latter term being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed. However, no part of the cost of the improvement of a street on which school property, used exclusively for public school purposes, abuts can be assessed against such property, and the board of education of the school district in which such property is located is neither required nor authorized to pay any part of the cost of said improvement out of its contingent fund, or to levy a tax for said purpose. *Op. Atty. Gen.* (1916), p. 663.

Under existing statutes lands owned by a board of education are not subject to assessment for road improvements. *Op. Atty. Gen.* (1919), p. 730.

Lands deeded to a board of education to be used for school purposes, with an express condition of reverter, upon abandonment of such use, revert to the grantor or his heirs.

Lands deeded to a board of education so long as used for school purposes revert automatically to the heirs of the grantor without an express condition of reverter. The board of education in such case takes only a qualified or limited fee, terminating when the stipulated use ceases.

The centralization of the township school district, and the consequent abandonment of lands used for sub-district schools, does not prevent the reverter, nor continue the limited estate.

An heir of the deceased grantor holding his inheritance and acquiring deeds from the other heirs has a right of entry upon the premises when the special use is abandoned.

Where a board of education, having a conditional or limited estate in lands, erects buildings and improvements thereon to adapt them to such special uses, and thereafter abandons the specified uses, such board of education within a reasonable time after such abandonment may remove the said buildings and improvements. *May vs. Board of Education*, 12 App. 456.

Property passing to state or subdivision not subject to tax; to others taxable above exemptions.

**SECTION 5334.** The succession to any property passing to or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution for purposes only of public charity, carried on in whole or in substantial part within this state, shall not be subject to the provisions of the preceding sections of this subdivision of this chapter. Successions passing to other persons shall be subject to the provisions of said sections to the extent only of the value of the property transferred above the following exemptions:

1. When the property passes to or for the use of the wife or a child of the decedent who is a minor at the death of the decedent, the exemption shall be five thousand dollars.

2. When the property passes to or for the use of the father, mother, husband, adult child or other lineal descendant of the decedent, or an adopted child, or person recognized by the decedent as an adopted child and made a legal heir under the provisions of a statute of this or any other state or country, or the lineal descendants thereof, or a lineal descendant of an adopted child, the exemption shall be three thousand five hundred dollars.

3. When the property passes to or for the use of a brother, or sister, niece, nephew, the wife or widow of a son, the husband of a daughter of the decedent, or to any child to whom the decedent, for not less than ten years prior to the succession stood in the mutually acknowledged relation of a parent, the exemption shall be five hundred dollars.

HISTORY.—R. S. § 2731-3; 90 v. 15, § 3; 108 v. Pt. I 561 (564); 108 v. Pt. II 1192 (1193). This section, as enacted in 108 v. Pt. I 561 (564), purports to amend the section bearing this number in P. & A. Code, which was R. S. § 2731-3; 90 v. 15, § 3; but it is not, in fact, an amendment of such section. It is analogous to P. & A. Code § 5332, which was R. S. § 2731-1; 94 v. 101, § 1; 91 v. 169; 90 v. 14.

SECTION 5349. Public school houses and houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit, public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit, shall be exempt from taxation. This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state, but leaseholds, or other estates or property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district, or subdistrict in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, shall be exempt from taxation as long as such property, or the rents, issues, profits or income thereof is used and exclusively applied for the support of free education by such city, village, district or subdistrict.

School houses,  
churches,  
colleges, etc.

HISTORY.—R. S. § 2732; 99 v. 449; 91 v. 393, 216; 88 v. 95; 61 v. 39, § 3; S. & S. 761; S. & C. 1440.

In pursuance of the authority contained in section 2 of article XII of the State Constitution general laws have been passed exempting from taxation the different classes of property enumerated in said section. Such exemptions are set out in Sections 5349 et seq. of the General Code. *Trustees vs. Roth*, 17 O. C. C. (N. S.) 562.

The sole power to exempt any lands from taxation is vested in the general assembly. There is no implied exemption. Exemptions from taxation must be expressed in clear and unmistakable terms. *Cincinnati vs. Hynicka*, 9 O. N. P. (N. S.) 273.

Where an exemption from taxation is claimed, the intention of the general assembly to grant such exemption must be expressed in clear and unambiguous terms. "The exemption must be shown indubitably to exist. At the outset every presumption is against it. A well-founded doubt is fatal to the claim. It is only where the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported." *Lee vs. Sturges*, 46 O. S. 153, 159; *Cincinnati College vs. State*, 19 Ohio 110; *Lander vs. Burke*, 65 O. S. 532, 542; *Watterson vs. Halliday*, 77 O. S. 150, 170.

As applied to school houses, the term "public school houses" as used in section 2 of article XII of the Constitution, means such as belonged to the public, and are designed for schools established and conducted under public authority. However, schools established by private donations, and which are carried on for the benefit of the public, and not with a view of profit, are "institutions of purely public charity" within the meaning of the provisions of the Con-

stitution, which authorizes such institutions to be exempt from taxation. *Gerke vs. Purcell*, 25 O. S. 229.

The exemption of property belonging to colleges and academies extends to all buildings and lands that are, with reasonable certainty, used for purposes of the institution and includes residences of the president, professors and janitors. *Kenyon College vs. Schnebly*, 12 O. C. C. (N. S.) 1, 81 O. S. 514.

Lands of a college used for a pumping station, from which water is furnished to the college community and is also sold to outsiders, at a profit, is taxable so long as the practice of vending water to persons not connected with it is continued. *Kenyon College vs. Schnebly*, supra.

The property of literary and scientific societies is only exempt from taxation when used exclusively for literary and scientific purposes. If used for other purposes it is liable to taxation, although the proceeds are in future to be applied for the promotion of literary and scientific purposes. *Cincinnati College vs. State*, 19 Ohio 111.

The real estate belonging to an institution of purely public charity is exempt from taxation only when used exclusively for charitable purposes; and if such real estate is rented for commercial and residence purposes it is not exempt although the income arising from such use is devoted wholly to the purpose of charity. *Rose Institute vs. Myers*, 92 O. S. 252.

A property which is used for college purposes alone is exempt from taxation. *Myers vs. Akins*, 8 O. C. C. 228.

An endowment fund of a college which belongs exclusively to it and which is devoted solely to deriving an income for its support is exempt from taxation. *Little vs. Seminary*, 72 O. S. 417.

Section 5353 General Code when enacted was within the authority granted to the general assembly by section 2 of article XII of the Constitution as said section read before its amendment in September, 1912; and said section 5353 General Code exempted from taxation the personal property of institutions of purely public charity including endowment funds which belong exclusively to them and which, with the income therefrom, are devoted solely to their support. *Myers vs. Ross Inst.*, 92 O. S. 238.

An assessment becomes a lien from the date of the passage of the assessing ordinance, and where a board of education has purchased real estate upon which assessments are partially unpaid, such unpaid assessments would continue to be a lien upon such property regardless of who was the owner. *Op. Atty. Gen.* (1920), p. 808.

SECTION 4760. Process in all suits against a board of education shall be by summons which shall be served by leaving a copy thereof with the clerk or president of the board.

HISTORY.—R. S. § 3976; 70 v. 195, § 68.

See *State vs. Coon*, 4 O. C. C. (N. S.) 560.

See *Opinions of Attorney General No. 2918* (1922), cited under Sec. 4747.

SECTION 4761. Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving. He shall prosecute all actions against a member or officer of a board of education for malfeasance or misfeasance in office, and he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity. When such civil action is between two or more

Processes  
against  
boards, how  
served.

Prosecuting  
attorney or  
city solicitor  
to be counsel  
of school  
board.



boards of education in the same county, the prosecuting attorney shall not be required to act for either of them. In city school districts, the city solicitor shall be the legal adviser and attorney for the board of education thereof, and shall perform the same services for such board as herein required of the prosecuting attorney for other boards of education of the county.

HISTORY.—R. S. § 3977; 70 v. 195, § 69; 79 v. 26; 97 v. 355.

A board of education may employ other counsel if the city solicitor refuses or fails to act as required by section 4761 General Code, and a court of equity will not interfere with the payment of the reasonable fees of such counsel, if the contract for their employment is otherwise in conformity to the statutory requirements. *Caldwell vs. Marvin*, 8 O. N. P. (N. S.) 384, 387; *Board of Education vs. Board of Education*, 4 App. 165, 22 O. C. C. (N. S.) 439.

In a controversy between a board of education of a city school district and the city, the solicitor is at liberty to choose which of the two parties he will represent regardless of a resolution of council ordering him to represent the city. *Op. Atty. Gen.* (1912), p. 1771.

The duties of the city solicitor with respect to city school district boards of education are set out in full in section 4761 G. C. and as he is made the legal adviser of such boards, it is his duty as such to give his opinion upon the legal title to real estate in which the board is interested. He may, however, formulate his opinion in any reliable legal manner he desires and is not compelled to make and prepare abstracts of title for such board of education. *Op. Atty. Gen.* (1912), p. 1841.

Inasmuch as under section 4761 G. C. the prosecuting attorney of the county is obliged to prosecute all actions against members of a village board of education for misfeasance or malfeasance in office, considerations of public policy will not permit that official to hold a position on such board of education. *Op. Atty. Gen.* (1912), p. 1523.

Section 4761 G. C., beyond dispute, makes the city solicitor the legal advisor of city school districts. Also, by provision of section 4761 the prosecuting attorney is made the legal adviser of all school boards within the county with the single exception of boards of education which are engaged in civil actions with one another.

A village solicitor being appointed by contract, fulfilling only contractual duties, serving for an indefinite term and not being obliged to take oath or give bonds, is not an official within the meaning of section 4762 G. C., which stipulates that these duties shall fall upon any official serving in a similar capacity to that of prosecuting attorney or city solicitor. This language refers to county solicitors, directors of law and corporation counsel (all of which offices existed at the time of the passage of Section 4762 G. C.) and to such other similar offices as might be created in the future.

At the present time, therefore, the legal duties necessitated by village board of education also fall upon the prosecuting attorney. *Op. Atty. Gen.* (1912), p. 487.

Except in case of civil action against another board of education in the county the county board of education has no authority in law to employ counsel other than the prosecuting attorney of the county. *Op. Atty. Gen.* (1915), p. 664.

Where the solicitor of a city represents such city in an action in which the city is plaintiff and the board of education of the city school district is one of the defendants, said board of education may employ counsel other than the city solicitor to defend it in said action, provided that before adopting a resolution employing such counsel and authorizing payment for services rendered therein there is filed with said board by the clerk thereof a certificate of

available funds as required by section 5660 G. C. Op. Atty Gen. (1915), p. 1778.

It is the duty of the prosecuting attorney to prepare bond issues and transcripts for boards of education of which they are legal advisers. Op. Atty. Gen. (1915), p. 1911.

Where a member of a board of education institutes and successfully maintains an action to restrain another member of the board of education from continuing to serve as a member of the board after his removal from the district, the claim of the attorney representing the plaintiff in said action for services rendered in connection therewith may not be allowed by said board of education and paid out of the school funds of the district. Op. Atty. Gen. (1916), p. 552.

Where in an action between the board of education of a school district and the county board of education, the prosecuting attorney of the county declines to represent said county board of education said county board may, upon the filing with it of the certificate of available money in the contingent fund for said purpose employ counsel to represent it in said case and pay for the services rendered out of said fund. Op. Atty. Gen. (1916), p. 915.

There is no legal objection to the prosecuting attorney of a county accepting employment as counsel of the village in said county provided the interest of the village represented by him is not adverse to that of the county, township, school district or other taxing district in said county, or to that of either of the boards mentioned in section 2917-1, and provided said employment is not concerning any matter involving the taxing authority of the council of said village coming before the county budget commission. Op. Atty Gen. (1916), p. 1919.

Section 2918 of the General Code authorizes county boards of education to employ counsel where the prosecuting attorney refuses to act under provision of Section 4761 G. C. Such counsel so employed by county boards of education are paid from the contingent fund provided by Section 4744-3 G. C. Op. Atty. Gen. (1917), p. 270.

The city solicitor is the legal adviser of the board of education of the city school district and where he stands ready to perform the duties involved in the trial of a case in which he represented the adverse party before he became such solicitor, there is no authority for such city board of education to employ counsel other than such city solicitor. Where the city solicitor refuses to act on account of his adverse interest in a case in which the board of education is a party, the board of education may employ counsel to represent it in such case. Op. Atty. Gen. (1918), p. 99.

Under Sections 2917, 2918 and 4761 G. C., the prosecuting attorney is charged with the duty of representing a township board of education in mandamus proceedings against the state auditor for distribution of a school fund provided in the state. Op. Atty. Gen. (1919), p. 120.

The prosecuting attorney of the county in which the municipality is located is the legal adviser of the board of education of a municipality which has become a city by virtue of the proclamation of the Secretary of State, while that municipality is still functioning under the village form of government and has not yet elected city officials.

Teachers' certificates issued by county boards of school examiners or the state board of school examiners, will be sufficient to carry teachers through the present year and until a city board of school examiners starts to function. Such city board of school examiners (7838 G. C.) can be appointed only by the board of education elected for the city school district in November, 1921. Op. Atty. Gen. No. 2054, May 9, 1921.

SECTION 4762. The duties prescribed by the preceding section shall devolve upon any official serving in a capacity similar to that of prosecuting attorney or city solicitor for the territory wherein a school district is situated, regardless of his official designation. No prosecuting attorney, city solicitor or other official acting in a similar capacity shall be a member of the board of education. No compensation in addition to such officer's regular salary shall be allowed for such services.

When other officers may act; restrictions.

HISTORY.—R. S. § 3977; 70 v. 195, § 69; 79 v. 26; 97 v. 355.

The counsel of the village being employed by contract and fulfilling only contractual duties for an indefinite term and not being obligated to take an oath of office or give bonds, is not an official within the meaning of section 4762 G. C., which stipulates that the duties imposed by section 4761 shall fall upon "any official serving in a similar capacity" to that of a prosecuting attorney or city solicitor. This language refers to county solicitors, directors of law and corporation counsel and to such other similar offices as might be created in the future. Op. Atty. Gen. (1912) p. 487.

SECTION 2918. Nothing in the preceding two sections shall prevent a school board from employing counsel to represent it, but such counsel, when so employed, shall be paid by such school board from the school fund. Nothing in such sections shall prevent the appointment and employment of assistants, clerks and stenographers to the prosecuting attorney as provided in this chapter, or the appointment by the court of common pleas or circuit court of an attorney to assist the prosecuting attorney in the trial of a criminal cause in such court, or the county commissioners paying for such services as provided by law.

Provisions for other counsel.

HISTORY.—R. S. § 1274; 98 v. 160.

SECTION 6443. Whenever any owner or owners of any separate or distinct tracts of land, not lying within the corporate limits of a municipality, the trustees of a township, the board of education of any public school district, any public board having charge and control of any roads or lands of a township or district, not within the corporate limits of a municipality, the board of county commissioners, the council of a city or village, or the trustees of any state, county or municipal public institution desire to provide drainage for such tracts of land, public highways, or the grounds of a public school; and whenever the council of any city or village, the board of education of any public school district, or the trustees of any state, county or municipal public institution find it necessary for the successful drainage of any public streets, highways or grounds located within a municipal corporation to drain the same either by an open ditch or tiled drain or other improvement, and the drainage thereof cannot be accomplished in the best and cheapest manner without affecting the lands of others not within such municipality, such owner or owners, township trustees, board of education, municipal council, board of county commissioners or trustees of any state,

Petition for drainage, statement, and bond required.



county or municipal public institution may file a petition with the county auditor of the county wherein all or the greater part of the land affected by such proposed drainage lies, setting forth the desire for, the necessity of and the believed benefits of such drainage, with the beginning, route and termini of the needed ditch or drain, or other improvement, including the necessary branches thereof. The petition shall also state the nature of the lands or places to be drained, as whether at present agricultural lands, submerged or overflowed lands, marsh lands, sink holes, or other lands to be benefited, and shall give the approximate acreage and the method by which in the opinion of the petitioner the object of the petition should be accomplished, as by open or tiled drain, diking, pumping, or other means. Such petition shall also contain the names of the persons and corporations, public or private, including any municipal corporation into or through which the improvement will pass, with the address, if known, whose lands, in the opinion of the petitioner or petitioners, will in any way be benefited by the proposed drainage, or damaged by the construction of the improvement. Such petitioner or petitioners shall also file with the county auditor at the time such petition is filed a bond in the minimum penal sum of one hundred dollars and a maximum of fifty dollars additional for each mile, or fraction thereof, of said improvement above one mile of length, with at least two sureties who are freeholders of the county. But in lieu of such personal sureties, a surety company authorized to do business in Ohio may be substituted. Such bond shall be made payable to the state of Ohio and conditioned for the payment of all costs if the prayer of the petition is not granted, or said petition is for any cause dismissed. But if said petition be filed by a board of education of any public school district, the council of a municipality, the board of county commissioners of any county or the trustees of any state, county or municipal public institution, no bond shall be required.

HISTORY.—108 v. Pt. I, 926 (929).

Notice of  
filing petition  
for drainage.

SECTION 6444. If such petition be filed by any party other than a board of county commissioners the county auditor shall give notice of the filing of such petition to the board of county commissioners of his county at their next meeting; and if a municipality be named as affected he shall at the same time notify the mayor thereof by mail; and if any building or ground under the control of any board of education or the trustees of any state, county, township or municipal public institution be named as affected, he shall at the same time notify by mail the president of the board of education or trustees of such institution named. \* \* \*

HISTORY.—108 v. Pt. 1, 930.

SECTION 6450. Upon receipt of either the notice of the filing of the petition, or of the time set by the county commissioners, or the court, by the mayor of any municipality, president of any board of education or president of any board of trustees of any state, county, township or municipal public institution he shall either report the fact to the council, board of education or trustees of the institution for its action by resolution in said matter, which may provide for concurrence in said proposed improvement, defense against it or such other action as in their discretion is proper to protect the municipal interest therein; or the mayor may upon his own discretion appoint the city or village solicitor and city or village engineer, if the municipality have such officers or employees, to act with himself as a committee to represent the municipality in the proceedings of such improvement, but if he so act and appoint without order by the council by resolution, it shall be without expense to the municipality other than the regular salary or per diem of such officers or employees. And the mayor or said committee shall not be authorized to employ legal counsel in said matter without authority given by the council.

Report by officer upon receipt of notice; resolution concurring or opposing improvements.

HISTORY.—108 v. Pt. I 926 (934), § 9.

SECTION 6469. After the granting of the petition for any improvement under this chapter, and the letting of contracts for work and material, and the ascertainment and determination of all known claims for compensation for property taken, or damages to property from the construction of the improvement, the total cost thereof including the preliminary cost, and the actual or estimated cost of supervision and any known costs of litigation taxed against the county shall be assessed proportionally, according to special benefits conferred, upon all the lots and parcels of land specially benefited thereby, the owners of which have, as in this chapter provided, had notice of the proceedings for such improvement, whether such lots and parcels of land abut on the improvement or not. Such assessment shall be made as well against the lands of any railway company, township, county, municipality, school district or board of education, or any other public board, as against privately owned property, for the benefit to the premises owned or controlled by such public corporation or body. \* \* \*

Proportionate assessment according to benefits.

HISTORY.—108 v. Pt. I, 945.

SECTION 6470. In making the assessment for benefits provided for in the preceeding section, the county engineer shall prepare a schedule of the lands shown by his surveys, or otherwise known to him to receive benefit from the improvement, and whose owners have had notice of its proposed construction, and shall show in such schedule the number of acres believed by him to be benefited and the percentage of such benefit, on the basis of one hundred per

Schedule of lands benefited and percentage of benefit. Assessment against property in municipality.

cent benefit to the land or lands subject to assessment and receiving the highest benefit from the improvement at the least probable additional cost to make it available. And he shall in such schedule, based on such acreage, percentage, and total amount to be assessed show the amount of assessment on each separate description of land, and the owner's name, if known.

But when the council of a municipal corporation, board of education or trustees of a state, county, township or municipal public institution is a petitioner for an improvement under this chapter, or named and notified as one of the parties affected thereby, and such improvement equally benefits the whole territory, or any defined portion thereof, within the limits of such municipal corporation, whether any part of the improvement lie within such limits or not, the engineer, county commissioners, court or jury having the duty of determining what portion of the cost and expense shall be assessed upon lands within such municipal limits for such benefit, may consider and treat such territory as a single parcel of land, and the sum so assessed shall be apportioned to all the lots and lands within the municipality or the benefited portion, by the county auditor according to the valuation of the separate parcels therein for taxation.

HISTORY.—108 v. Pt. I, 926 (945), Sec. 28.

Tax levy by  
board of edu-  
cation.

SECTION 6494. If a party to an improvement proceeding under this chapter, the board of education of a district interested in land granted by congress for the support of common schools, unless such lands have been permanently leased, and of a district owning or holding other land for school purposes, when an assessment is made upon such land, or part thereof, under the provisions of this chapter, shall pay such assessment out of the contingent fund of the district, and, if necessary for that purpose, may increase the levy for such fund otherwise authorized by law.

HISTORY.—108 v. Pt. I 926 (955), § 53. For an analogous section, see P. & A. Code § 6510, which was R. S. § 4503; 68 v. 60, § 23. For a section analogous to the section bearing this number in P. & A. Code, see G. C. § 6443, which was 108 v. Pt. I 926 (929), § 2. P. & A. Code § 6494, which was R. S. § 4483; Revised Statutes of 1880, was repealed in 108 v. Pt. I 926 (970), § 96.

Application  
shall be by  
petition.  
Board of edu-  
cation may  
petition for  
road.

SECTION 6862. Applications to locate, establish, alter, widen, straighten, vacate or change the direction of a public road shall be made by petition to the county commissioners signed by at least twelve free holders of the county residing in the vicinity of the proposed improvement, which petition shall set forth the route and termini of the road, or part thereof, to be located, established, or vacated, or the particular manner in which such road is to be altered, widened, straightened, or the direction thereof changed. When such road or proposed road lies wholly within any school district and is necessary for the convenience and welfare of the pupils in such district, the board of education of such district may, by resolution, petition for such



road. The word "improvement" used in sections 6862 to 6878 inclusive of the General Code signifies any location, establishment, alteration, widening, straightening, vacation or change in the direction of a public road, or part thereof, as requested in a petition filed under the authority of such sections, or determined upon by a board of county commissioners or joint board by resolution adopted by unanimous vote.

HISTORY.—106 v. 574, § 3; 107 v. 69 (71).

## CHAPTER II

### TREASURER AND CLERK OF SCHOOL DISTRICTS

#### SECTION

- 4763. Treasurer of city to be treasurer of city school district; county treasurer to be treasurer of other school districts not having depositories.
- 4764. Bond of school district treasurer.
- 4765. Treasurer to give additional sureties or new bond on request of board.
- 4766. Filing and approval of treasurer's bond.
- 4767. Funds and securities to be counted at time of approval of bond.
- 4768. Disbursements to be made on order signed by president or vice-president and countersigned by clerk.
- 4769. Liability of clerk paying over to treasurer moneys in excess of bond.
- 4770. Annual settlement by treasurer with county auditor.
- 4771. Compensation of treasurer for making settlement.
- 4772. Penalty for failure to make settlement.
- 4773. Treasurer to deliver funds to successor.
- 12200. Sureties of treasurer may apply for discharge.
- 12201. Proceedings by board of education in such case.
- 12202. Original sureties not to be released until new bond filed.
- 2303. When treasurer and sureties may be released from liability for loss of funds by fire, robbery, bank failure, etc.
- 2304. Finding to be made by board of education in such case.
- 2305. Appeal by tax payer from finding of board of education discharging treasurer and sureties.

#### SECTION

- 2306. Trial in common pleas court on such appeal.
- 2307. Submission to electors of school district of question of discharge of treasurer and sureties.
- 2308. Electors may demand submission of said question to vote.
- 2309. How notice of election in such case given.
- 2310. Form of ballot on said election.
- 2311. Proceedings to be taken when result of election ascertained.
- 4774. Bond of clerk.
- 4775. Clerk of board to make annual financial report and statistical statement.
- 4776. Publication of statement of receipts and expenditures.
- 4777. Clerk to deliver books, papers, etc., to successor.
- 4778. Treasurer and clerk to keep accounts in book furnished by county auditor.
- 4779. What clerk's account shall show.
- 4780. What treasurer's account shall show.
- 4781. Compensation of treasurer and clerk.
- 4782. When treasurer of school fund may be dispensed with.
- 4783. When clerk shall perform duties of treasurer.
- 4784. Disposition of moneys of school district when depository ceases to act.
- 2607. Annual report of sheep killed by dogs and amount of tax transferred to school funds.
- 3273. Treasurer's settlement with board of education.
- 3315. Examination when school officers fail to attend.

Treasurer of the school funds.

SECTION 4763. In each city school district, the treasurer of the city funds shall be the treasurer of the school funds. In all exempted village, village and rural school districts which do not provide legal depositories as provided in sections 7604 to 7608 inclusive, the county treasurer shall be the treasurer of the school funds of such district.

HISTORY.—R. S. § 4042; 70 v. 24, § 44; 85 v. 193; 97 v. 367; 104 v. 158 (159); 109 v. 552.

If the treasurer of a school district deposits school funds in a bank by virtue of section 12875 General Code, any interest accruing from such fund inures to the benefit of the school district and not to the treasurer individually. *Eshelby v. Board of Education*, 66 O. S. 71.

A city treasurer is not entitled to extra compensation for his services as treasurer of a school fund in the absence of a statute providing for such compensation. *Knorr v. Board of Education*, 8 Dec. Repr. 672, 9 Bull. 182.

A board of education may sue its treasurer for money received and not accounted for. *Board of Education v. Milligan*, 51 O. S. 115.

A treasurer of a municipal corporation may refuse to act as treasurer of the school board without thereby affecting his position as treasurer of the corporation. *Op. Atty. Gen.* (1912), p. 1160.

Village and township treasurers continued to act as treasurers of the school funds of their respective village and township school district until they were superseded by the county treasurer by virtue of section 4763 G. C., as amended 104 O. L. 159, and such treasurers continued to draw whatever salary they were entitled to until so superseded by the county treasurers at the time said section became effective.

The clerk of the school district, however, will continue to act as the treasurer of such village and township school district if a depository had been previously provided and the treasurer dispensed with by the respective boards of education. Under said section 4763, *supra*, the county treasurers continue to act as the treasurers of the respective village and rural school district until such time as a depository is established for such funds, in accordance with section 4782 G. C., 104 O. L. 159. *Op. Atty. Gen. (1914), p. 1676.*

Upon consideration of sections 4763 to 4784 G. C., the clerk of the board of education can receive extra compensation for performing the duties of treasurer of such board, and the board of education has the legal right to fix the compensation of such clerk, when he is required to perform the added duties of treasurer of the board of education, because of the dispensation of said treasurer under section 4782 G. C. *Op. Atty. Gen. (1914), p. 1202.*

When a depository has been provided by a city board of education for its school funds, as required by law, the board of education of the city must dispense with the treasurer and the clerk of the board of the city school district performs all the services and duties of such treasurer. *Op. Atty. Gen. (1915), p. 71.*

In a city school district in which a school teachers' pension fund has been established and in which the board of education has not provided a depository for the school funds, or having provided a depository, has not dispensed with the treasurer of said funds under authority of section 4782 G. C., as amended 104 O. L. 158, the city treasurer, being *ex officio* treasurer of the city school district is treasurer of the school teachers' pension fund under provision of section 7889 G. C.

In a village or rural school district in which a teachers' pension fund has been established and in which the board of education has not provided a depository for the funds of said city in the manner provided by law; and has not dispensed with the treasurer of said fund under authority of section 4782 as amended, the county treasurer, being *ex officio* treasurer of the school funds of said district, is treasurer of the school teachers' pension fund provided for in said section 7889 G. C.

In a school district in which a school teachers' pension fund has been established and is being maintained, and in which the board of education has provided a depository for the school funds in the manner authorized by law, and has dispensed with the treasurer of said funds under authority of said section 4782 G. C., the clerk of said board who is now performing all the services and discharging all of the duties, and who is subject to all the obligations of the treasurer of such school district, is treasurer of said school teachers' pension fund provided for in section 7889 G. C. *Op. Atty. Gen. (1916), p. 266; Op. Atty. Gen. (1916), p. 1092.*

Neither the board of education of said school district nor the board of trustees of said school teachers' pension fund have any authority in law to provide a depository for said fund for the purpose of relieving the clerk-treasurer as custodian of said fund of any and all liability incident to the care and custody of moneys belonging to such fund. *Op. Atty. Gen. (1916), p. 1092.*

When a depository has been provided for the school moneys, the clerk of said board becomes acting treasurer, and while the language of section 4782 G. C. is directory, yet there is no provision of law for the selection of a school treasurer by a board of education. *Op. Atty. Gen. (1917), p. 228.*



The treasurer of village and township funds who continues to act as treasurer of the school funds after a depository has been provided under sections 7604 to 7608 G. C., is not entitled to compensation for such services. Op. Atty. Gen. (1917), p. 192.

It is not necessary for a county treasurer to give a bond as school treasurer when he becomes the treasurer of the school funds of village or rural school districts. Op. Atty. Gen. (1914), p. 1765.

The amendment of section 4763 G. C., as amended in H. B. 180, 109 O. L., 552, does not have the effect of giving new life to the provisions that the treasurer of a city shall be the treasurer of such city school district, because the general assembly did not intend in the passing of an act "relative to exempted village school districts" that section 4763 G. C. should be a substitute for the provisions of 4782 and 7604 et seq. G. C. In a city school district the duties of treasurer of the school fund shall be performed by the clerk of the board of education of the city school district. Op. Atty. Gen. No. 2844, Feb. 6, 1922.

See Opinions of Attorney General No. 2918 (1922), cited under Sec. 4747.

School district  
treasurer;  
bond of.

SECTION 4764. Before entering upon the duties of his office, each school district treasurer shall execute a bond, with sufficient sureties, in a sum not less than the amount of school funds that may come into his hands, payable to the state, approved by the board of education, and conditioned for the faithful disbursement according to law of all funds which come into his hands, provided that when school moneys have been deposited under the provisions of sections 7604-7608 inclusive, the bond shall be in such amount as the board of education may require.

HISTORY.—R. S. § 4043; 70 v. 195, §§ 46, 82; 76 v. 16, § 1, 92 v. 210; 97 v. 367; 101 v. 264.

Held that as there is no statutory authorization for the payment by the board of education of the premium on the bond of the clerk or treasurer of the school district, such expense may not legally be borne by said board of education. Op. Atty. Gen. (1911), p. 430.

The treasurer of a school district who deposits money in a bank other than in conformity to the provisions of the depository law is, together with the sureties upon his bond, responsible for losses sustained by failure of the bank. Mere knowledge by the board of education of such deposit does not relieve the treasurer and his sureties of liability. Op. Atty. Gen. (1915), p. 84.

Additional  
sureties or  
new bond.

SECTION 4765. Thereafter such treasurer may be required to give additional sureties on his accepted bond, or to execute a new bond with sufficient sureties to the approval of the board of education when such board deems it necessary. If he fails for ten days after service of notice in writing of such requisition, to give such bond or additional sureties, as so required, the office shall be declared vacant and filled as in other cases.

HISTORY.—R. S. § 4043; 70 v. 195, §§ 46, 82; 76 v. 16, § 1; 92 v. 210; 97 v. 367.

As members of the school board must approve the bond of the treasurer and vote upon the question of increasing or changing the same or of requiring additional sureties thereon, the offices of member of the board of education and treasurer of the board are incompatible and may not be held by the same person. Op. Atty. Gen. (1912), p. 1160.

SECTION 4766. Each such bond, when so executed and approved, shall be filed with the clerk of the board of education of the district, and recorded. He shall cause a certified copy thereof or the names of additional sureties, to be filed with the county auditor without delay.

Filing and approval of bond.

HISTORY.—R. S. § 4043; 70 v. 195, §§ 46, 82; 76 v. 16, § 1; 92 v. 210; 97 v. 367.

SECTION 4767. Such board at the time of the approval of any bond or sureties, shall require the treasurer of the school funds to produce all money, bonds or other securities in his hands as such treasurer, and they then must be counted by the board or a committee thereof, in the presence of its clerk, who thereupon shall enter upon the records of the board, a certificate, setting forth the exact amount of money or securities so found in the hands of such treasurer. Such record shall be signed by the president and clerk of the board and be prima facie evidence that the amount therein stated was actually in the treasury at that date.

Counting of funds.

HISTORY.—R. S. § 4043; 70 v. 195, §§ 46, 82; 76 v. 16, § 1; 92 v. 210; 97 v. 367.

SECTION 4768. No treasurer of a school district shall pay out any school money except on an order signed by the president or vice-president and countersigned by the clerk of the board of education, and when such school moneys have been deposited as provided by sections 7604-7608 inclusive, no money shall be withdrawn from any such depository, except upon an order signed by the treasurer and by the president or vice-president and countersigned by the clerk of the board of education; and no money shall be paid to the treasurer of the district other than that received from the county treasurer, except upon the order of the clerk of the board, who shall report the amount of such miscellaneous receipts to the county auditor each year immediately preceding such treasurer's settlement with the auditor.

Disbursements.

HISTORY.—R. S. § 4047; 71 v. 15, § 83; 97 v. 367; 101 v. 264.

The board of commissioners of the sinking fund of a school district appointed under section 7614 General Code, is entitled to the management and control of said fund for the payment of debts and the investment of the surplus without dictation, but it is not entitled to the custody or possession thereof. Orders drawn on the sinking fund must be drawn by the president and clerk of the board of education in favor of the person entitled thereto, upon requisition made upon them by the board of commissioners of the sinking fund. *State ex rel. v. Board of Education*, 3 O. N. P. (N. S.) 401.

The treasurer of a school district who deposits money in a bank other than in conformity to the provisions of the depository law is, together with the surety upon his bond, responsible for losses sustained by failure of the bank. Mere knowledge by the board of education of such illegal deposit does not relieve the treasurer and his sureties of liability. *Op. Atty. Gen.* (1915), p. 84.

SECTION 4769. The clerk of a board of education or the county auditor shall pay no money into the hands of the treasurer of a school district in excess of the amount of his

Liability of clerk or auditor.

bond. Should any such clerk or auditor violate this provision, he and his bondsmen shall be liable for any loss occasioned thereby. But where depositories for school funds have been created under the provisions of sections 7604-7608 inclusive, all school moneys shall be paid directly into such depository or depositories by the auditor upon the written order of the board of education signed by the president or vice-president and countersigned by the clerk. In case the school funds have been deposited under the provisions of sections 7604-7608 inclusive, the limitation of payment herein contained shall not apply. Before giving such treasurer a warrant or order for school funds, the auditor may require the treasurer to file with him a statement showing the amount of such funds in his possession, signed by the clerk of the board of education.

HISTORY.—R. S. § 4048; 70 v. 195, § 84; 97 v. 367; 101 v. 264.

Annual settlement by treasurer with county auditor.

SECTION 4770. Within the first ten days of September, each year, the treasurer shall settle with the county auditor for the preceding school year, and for that purpose he shall make a certified statement showing the amount of money received, from whom, and on what account, the amount paid out, and for what purpose. He shall produce vouchers for all payments made. If the auditor, on examination, finds the statement and vouchers to be correct, he shall give the treasurer a certificate of the fact, which shall prima facie be a discharge of the treasurer for the money paid. When the treasurer's term begins on the first day of September, the annual settlement shall be made by the outgoing treasurer.

HISTORY.—R. S. § 4044; 92 v. 58; 85 v. 192, 194; 71 v. 9, § 47.

The statutory provisions with reference to the common school funds must be strictly followed; and the county auditor and the township treasurer have no discretion in relation to such funds. *State v. Zeeb*, 9 O. C. C. 13.

Section 4770 G. C. is not repealed by implication by the provisions of section 4782 G. C., as amended 104 O. L. 158. The provisions of section 4770 G. C., are still in force and taken in connection with the provisions of section 4782 G. C., as amended, and section 4783 G. C., prescribe the duties of the clerk of the board of education of the school district in making the required settlement with the county auditor.

The clerk of the board of education which has dispensed with its school treasurer, under authority of section 4782 G. C., as amended is not entitled to the compensation and mileage formerly allowed to said treasurer under authority of section 4771 G. C., for making the annual settlement with the county auditor, as required by the provisions of section 4770 G. C. *Op. Atty. Gen.* (1915), p. 1073.

See *Op. Atty. Gen.* (1914), p. 1202, where it was held that the clerk of the board of education can receive extra compensation for performing the duties of treasurer of such board where such treasurer had been dispensed with, and that such board of education should take such added duties into consideration in fixing the compensation of the clerk.



SECTION 4771. For making such settlement, the treasurer shall be entitled to receive the sum of one dollar, and also five cents per mile for traveling to and from the county seat, to be paid from the county treasury, on the order of the county auditor.

Compensation  
for making  
settlement.

HISTORY.—R. S. § 4044; 92 v. 58; 85 v. 192, 194; 71 v. 9, § 47.

Section 4770 G. C. is not repealed by implication by the provisions of section 4782 G. C., as amended 104 O. L. 158. The provisions of section 4770 G. C., are still in force and taken in connection with the provisions of section 4782, G. C. as amended, and section 4783 G. C., prescribed the duties of the clerk of the board of education of the school district in making the required settlement with the county auditor.

The clerk of the board of education which has dispensed with its school treasurer, under authority of section 4782 G. C., as amended, is not entitled to the compensation and mileage formerly allowed to said treasurer under authority of section 4771 G. C., for making the annual settlement with the county auditor, as required by the provisions of section 4770 G. C. Op. Atty. Gen. (1915), p. 1073.

See Op. Atty. Gen. (1914), p. 1202, where it was held that the clerk of the board of education can receive extra compensation for performing the duties of treasurer of such board where such treasurer had been dispensed with and that such board of education should take such added duties into consideration in fixing the compensation of the clerk.

SECTION 4772. If the treasurer of any school district wilfully or negligently fails to make such annual settlement within the time so prescribed, he shall forfeit and pay fifty dollars, to be recovered in a civil action in the name of the state, which amount, when collected, shall be paid into the county treasury and applied to the use of the common schools in his district. In case of such failure, the county auditor shall proceed forthwith to recover the forfeiture by suit against the treasurer before a justice of the peace of the county.

Penalty for  
failure to  
make settle-  
ment.

HISTORY.—R. S. § 4045; 71 v. 9, § 47.

A board of education may sue its treasurer for money received and not accounted for. Board of Education v. Milligan, 51 O. S. 115.

SECTION 4773. At the expiration of his term of service, each treasurer shall deliver to his successor in office, all books, papers, money, and other property in his hands belonging to the district, and take duplicate receipts of his successor therefor. One of these he shall deposit with the clerk of the board of education within three days thereafter.

Treasurer to  
deliver funds  
to successor.

HISTORY.—R. S. § 4049; 1888, April 11, 85 v. 192, 194; 71 v. 9, § 47.

As to failure or refusal to pay over public money, see G. C. § 13674.

An oral agreement between a treasurer and a board of education whereby the treasurer is permitted to use school funds for his own use for a period beyond the expiration of his term of office is in violation of law; and no recovery can be had by the board of education against the sureties on the bond executed by the treasurer covering the moneys thus loaned to the treasurer. Board of Education v. Thompson, 33 O. S. 321.

Sureties of treasurer of school fund may apply to be discharged.

SECTION 12200. A surety of the treasurer of school funds, in any lawfully organized school district, may notify the board of education of the district by at least five days' notice, in writing, that he is unwilling to continue as surety for such treasurer, and at a time therein named, will make application to the board to be released from further liability upon his bond. He also shall give at least three days' notice in writing to such treasurer, of the time and place at which the application will be made.

HISTORY.—R. S. § 5841; 70 v. 195, § 48.

Proceedings by board of education in such case.

SECTION 12201. Upon such notice being given, the board of education shall hear the application, and if in their opinion there is good reason therefor, require the treasurer to give a new bond, conditioned according to law, and to the satisfaction of the board, within such time as they direct. If the treasurer fails to execute such bond the office shall be vacant and shall immediately be filled as are other vacancies therein.

HISTORY.—R. S. § 5842; 70 v. 195, § 48.

Not released till bond filed, etc.

SECTION 12202. Such original sureties shall not be released or discharged until the filing of the new bond, or the expiration of the time allowed therefor. The cost of such application shall be paid by the person making it.

HISTORY.—R. S. § 5842; 70 v. 195, § 48.

Treasurers and sureties may be released.

SECTION 2303. When a loss of public funds, entrusted to a county, city, village, township, or school district treasurer, by virtue of his office, heretofore or hereafter results from fire, robbery, burglary, or inability of a bank to refund public money lawfully in its possession belonging to such public funds, the county commissioners, township trustees, a city or village council or a board of education, respectively, may release and discharge such treasurer and the sureties upon his official bond, from all liability to or demands of such county, township, city, village or school district, for loss so created and arising.

HISTORY.—R. S. 22b-4; 99 v. 388, § 1; 98 v. 120.

What finding necessary to release.

SECTION 2304. Before such release and discharge shall be effected, the board of county commissioners, township trustees, city or village council or board of education shall find that the treasurer was entrusted by law with the care of such public funds, and that the loss thereof was not occasioned by his fault or negligence, and an entry of such findings shall be made upon the record book of the proceedings of such council or board.

HISTORY.—R. S. § 22b-4; 99 v. 388, § 1; 98 v. 120.

Appeal from findings.

SECTION 2305. Within five days after such finding of release and discharge is made, a taxpayer of such county, township, municipality or school district, may appeal therefrom to the common pleas court of the county. Until such appeal is finally determined, the finding and other proceed-

ings shall not effect a release and discharge. Notice in writing of intention to appeal shall be filed with the clerk or auditor of the board or council making the findings within five days. Within thirty days after such finding, a transcript thereof and of the other proceedings shall be filed in the common pleas court and docketed as other cases.

HISTORY.—R. S. § 22b-4; 99 v. 388, § 1; 98 v. 120.

SECTION 2306. The common pleas court shall proceed to try and determine the question whether such public funds were lost by the fault or negligence of the treasurer. If it be found that the funds were so lost, the finding of the board or council ordering the discharge shall be vacated. If it be found that the funds were not so lost, the finding shall remain in full force and the court shall cause its judgment to be certified to the board or council making such finding.

Trial in common pleas court.

HISTORY.—R. S. § 22b-4; 99 v. 388, § 1; 98 v. 120.

SECTION 2307. If the finding of such county commissioners, township trustees, city or village council or board of education, as the case may be, has been made and entered on the record book of its proceedings, such board or council may, at the next ensuing general election to be held in the county, township, city, village or school district, submit to the qualified electors thereof, the question whether such treasurer and the sureties upon his official bond shall be discharged from liability on account of such loss of funds.

Questions may be submitted to vote.

HISTORY.—R. S. § 22b-4; 99 v. 388, § 1; 98 v. 120.

SECTION 2308. If twenty-five per cent of the qualified electors of such county, township, city, village or school district, petition the council or board thereof for the privilege of determining by ballot whether such treasurer and the sureties on his official bond shall be released and discharged, such council or board shall submit the question to the qualified electors of the county, township, city, village or school district as herein provided.

Electors may demand submission to vote.

HISTORY.—R. S. § 22b-4; 99 v. 388, § 1; 98 v. 120.

SECTION 2309. The deputy state supervisors of elections of the county, or within which such township, city, village or school district is located, shall cause notice of the submission of such proposition to the electors thereof. For the release of a county or city treasurer the notice shall be by publication in two newspapers of opposite politics in the county or city, for at least thirty days next prior to the date upon which the election is to be held. For the release of a village or township treasurer, twenty days' notice of the election shall be given by posting notices thereof in five public places within such village or township. For the release of a school treasurer, ten days' notice of such election shall be given by posting notice thereof in five public places in the school district.

Notice of election shall be given.

HISTORY.—R. S. 22b-5; 98 v. 122, § 2.



Form of  
ballot.

SECTION 2310. The ballots for such election shall have printed thereon "Discharge of treasurer and sureties—yes." "Discharge of treasurer and sureties—no." Such ballot shall have a place at the left of each proposition for the voter to mark according to law, the proposition he favors.

HISTORY.—R. S. § 22b-6; 98 v. 122, § 3.

Proceedings  
on result of  
election.

SECTION 2311. If a majority of the votes cast upon such proposition at the election are in favor of the discharge of such treasurer and his sureties, the county commissioners, township trustees, city or village council or board of education, as the case may be, shall cause the result of the election to be entered in the record book of its proceedings ordering such election, and thereupon shall release and discharge such treasurer and his sureties on his official bond from all liability on account of such loss. If a majority of the votes cast are against the discharge, the result of the election shall be made in the record book of proceedings of the council or board, and no further action therein shall be taken by such council or board.

HISTORY.—R. S. § 22 b-7; 98 v. 122, § 4.

Bond of  
clerk.

SECTION 4774. Before entering upon the duties of his office, the clerk of each board of education shall execute a bond, in an amount and with surety to be approved by the board, payable to the state, conditioned for the faithful performance of all the official duties required of him. Such bond must be deposited with the president of the board, and a copy thereof, certified by him, shall be filed with the county auditor.

HISTORY.—R. S. § 4050; 70 v. 195, § 45.

The clerk of a board of education is not authorized nor is it made his duty by statute, to receive and become the custodian of tuition funds belonging to such board, and such board is not empowered to make a rule conferring such authority or imposing such duty upon the clerk of the board; and where pursuant to such a rule the clerk is permitted to receive and have the custody of such funds, which he failed to safely keep and account for, the sureties on his statutory bond are not liable therefor. *State v. Griffith et al*, 74 O. S. 80.

The clerk of a board of education must furnish a bond in order to qualify. *State ex rel. v. Voon*, 4 O. C. C. (N. S.) 500.

The condition in the bond of a clerk that he shall "faithfully disburse according to law all such funds as shall from time to time come into his hands," includes not merely cash received by him, but also drafts and certificates of deposit which he received as cash, and when received would have been paid upon presentation. *Reed v. Board of Education*, 39 O. S. 635.

Inasmuch as there is no statutory authority for the payment by the board of education of the premium on the bond of the clerk or treasurer of the board of education of the school district the expense of same may not be legally borne by the board of education. *Op. Atty. Gen.* (1911), p. 430.

Held that a member of the Ohio general assembly cannot serve as the clerk of the village board of education of which he is a member and receive a salary as such clerk. *Op. Atty. Gen.* (1915), p. 327.

A non resident of a school district may not hold the office of clerk of the board of education of said school district. Op. Atty. Gen. (1915), p. 2453.

The clerk of the board of education elected by said board at its meeting on the first Monday in January under authority of section 4747 G. C., as amended in 104 O. L. 133, is required before entering upon the duties of his office to give a bond in the amount and with surety to be approved by said board, payable to the state, conditioned for the faithful performance of all the official duties required of him. The board of education in fixing the amount of said bond should take into consideration the added duties which the clerk is required to perform under the provisions of the latter part of section 4782 G. C. as amended in 104 O. L. 158. Op. Atty. Gen. (1915), p. 2495.

SECTION 4775. The clerk of each board of education shall prepare the annual report of the receipts and expenditures of school money and the statistical statement in reference to the schools, required by law to be made by the board, and transmit it to the county auditor on or before the first day of September. But in each school district having a superintendent of schools, such report, except the receipts and expenditures of money, shall be made by the superintendent.

Annual statistical report of board of education.

HISTORY.—R. S. § 4052; 70 v. 195, § 82; 85 v. 194, 97 v. 368.

SECTION 4776. Except city districts, the board of education of each district shall require the clerk of the board annually, ten days prior to the election, to prepare and post at the place or places of holding such elections, or publish in some newspaper of general circulation in the district, an itemized statement of all money received and disbursed by the treasurer of the board, within the school year next preceding.

Publication of statement of receipts and expenditures by clerk.

HISTORY.—R. S. § 4053; 70 v. 195, § 66; 97 v. 368.

Held that a city school district is not authorized to pay for publication in a newspaper of a statement of receipts and expenditures for the year and that where this has been done the members of the board of education who voted in favor of such publication and for paying for same are guilty of misfeasance in office and are subject, under the provisions of section 286 G. C., to civil action for the recovery of the money paid to the newspaper for such publication. Held, however, that the president, clerk and treasurer of the board of education acting in good faith in carrying out the order of the board of education are not liable for such illegal payment. Op. Atty. Gen. (1911), p. 272.

SECTION 4777. At the expiration of his term of office, each clerk shall deliver to his successor all books and papers in his hands relating to the affairs of his district, including certificates and copies thereof, and reports of school statistics, filed by teachers.

Clerk to deliver books, etc., to successor.

HISTORY.—R. S. § 4054; 70 v. 195, § 84.

SECTION 4778. The auditor of each county shall furnish to the clerk and treasurer of each school district in his county a suitable blank book, made according to the form prescribed by the bureau of inspection and supervision of

How treasurer and clerk to keep accounts.

public offices, in which each must keep an account of the school funds of his district.

HISTORY.—R. S. § 4055; 70 v. 195, § 84; 97 v. 368.

Clerk's  
account.

SECTION 4779. The clerk's account shall show the amounts certified by the county auditor to be due the district, all sums paid to the treasurer from other sources on his order, and all orders drawn by him on the treasurer, upon what funds and for what purposes drawn.

HISTORY.—R. S. § 4055; 70 v. 195, § 84; 97 v. 368.

Treasurer's  
account.

SECTION 4780. The treasurer's accounts shall show the amounts received from the county treasurer, all sums received from other sources on the order of the clerk, the amounts paid out, and from what funds and for what purposes paid. A separate account of each fund must be kept, and each account balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown.

HISTORY.—R. S. § 4055; 70 v. 195, § 84; 97 v. 368.

Compensation  
of treasurer  
and clerk.

SECTION 4781. The board of education of each school district shall fix the compensation of its clerk and treasurer, which shall be paid from the contingent fund of the district. If they are paid annually, the order for the payment of their salaries shall not be drawn until they present to the board of education a certificate from the county auditor stating that all reports required by law have been filed in his office. If the clerk and treasurer are paid semi-annually, quarterly, or monthly, the last payment on their salaries previous to August thirty-first, must not be made until all reports required by law have been filed with the county auditor and his certificate presented to the board of education as required herein.

HISTORY.—R. S. § 4056; 70 v. 195, § 49; 80 v. 95; 85 v. 194; 97 v. 368.

Contrary to the general rule of policy that a member of a board may not hold a salaried position under such board, special provision of statute makes it possible for a member of the board of education to serve as its clerk and receive the salary for both positions. Op. Atty. Gen. (1911), p. 1089.

Held upon consideration of the provisions of sections 4763 to 4784 G. C. that the clerk of the board of education can receive extra compensation for performing the duties of treasurer of such board, and that the board of education has the legal right to fix the compensation of such clerk when he is required to perform the added duties of the treasurer of the board of education because such treasurer is dispensed with under the provisions of section 4782 G. C. Op. Atty. Gen. (1914), p. 1202.

A member of the general assembly of Ohio cannot serve as the clerk of the village board of education of which he is a member and receive a salary as such clerk. Op. Atty. Gen. (1915), p. 327.

Held that the clerk of a board of education which has dispensed with its school treasurer under authority of section 4782 G. C., is not entitled to the compensation and mileage formerly allowed to said treasurer under authority of section 4771 G. C. for making the annual settlement with the county auditor as required by the provisions of section 4770 G. C. Op. Atty. Gen. (1915), p. 1073.



SECTION 4782. When a depository has been provided for the school moneys of a district, as authorized by law, the board of education of the district shall dispense with a treasurer of the school moneys belonging to such school district. The clerk of the board of education of such district shall perform all the services, discharge all the duties and be subject to all the obligations required by law of the treasurer of such school district.

When treasurer of school fund dispensed with.

HISTORY.—R. S. § 4042a; 99 v. 206; 104 v. 158 (159); 108 v. Pt. I 704 (708).

Under section 4782 G. C. where a school district depository is established by the board of education, the clerk performs the duties of the treasurer, and a member of the school board duly elected as clerk of such board may in this case perform such duties. *Op. Atty. Gen.* (1912), p. 1776.

The clerk of the board of education can receive extra compensation for performing the duties of the treasurer of such board where the treasurer has been dispensed with by the board of education under section 4782 G. C., and such board has the legal right to fix the compensation where he is required to perform the added duties of the treasurer. *Op. Atty. Gen.* (1914), p. 1202.

Held that if a board of education fails to establish a depository as required by section 4782 G. C., then an action in mandamus lies against such board to compel such board to comply with the provisions of said section and that any person interested in the schools may bring such action in the name of the state as provided in sections 12286 and 12287 G. C. *Op. Atty. Gen.* (1914) p. 1475.

It is necessary for the clerk of the school board to give a new bond when such clerk assumes the duty of the treasurer of the school funds. *Op. Atty. Gen.* (1914), p. 1765.

Where a board of education of a city school district has provided a depository for the funds of such district and has dispensed with the position of treasurer of said funds by authority of Section 4782 G. C., the clerk of said board, having succeeded to the duty of treasurer of said funds under provision of the latter part of Section 4782 G. C., is treasurer of the library fund of said district provided for in Section 4782 G. C.

In a village or rural school district where the board of education has not provided a depository for the school funds, the county treasurer being treasurer of the funds of such school district, becomes, under the provision of the latter part of Section 4763 G. C. the treasurer of the library fund of said school district.

Where the board of education of a village or rural school district has provided a depository for the funds of said school district and has dispensed with the position of treasurer of said funds under authority of Section 4782 G. C., the clerk of said school district having succeeded to the duties of treasurer of said board becomes treasurer of the library fund of said school district. *Op. Atty. Gen.* (1915), p. 2309.

The clerk of a board of education elected by said board at its meeting on the first Monday in January under authority of Section 4747 G. C., as amended 104 O. L. 133, is required before entering upon the duties of his office to give a bond in an amount and with surety to be approved by said board, payable to the state, conditioned for the faithful performance of all the official duties required of him. The board of education in fixing the amount of said bond should take into consideration the added duties which the clerk is required to perform where the treasurer is dispensed with by the board under authority of the latter part of Section 4782 G. C., as amended 104 O. L. 158. *Op. Atty. Gen.* (1915), p. 2495.

Where a depository has been provided by a city board of education for its school funds as authorized by law the board of education of the city must dispense with the treasurer and the clerk

of the board of the city school district performs all the services and duties of such treasurer. Op. Atty. Gen. (1915), p. 71.

In a city school district in which a school teachers' pension fund has been established, and in which the board of education has not provided a depository for the school funds, or having provided a depository, has not dispensed with the treasurer of said board under authority of Section 4782 G. C., as amended 104 O. L. 158, the city treasurer being exofficio treasurer of the city school district, is treasurer of the school teachers' pension fund provided for by Section 7875 et seq. G. C.

In a village or rural school district in which a teachers' pension fund has been established and in which the board of education has not provided a depository for the funds of said district in the manner provided by law, and has not dispensed with the treasurer of said funds under authority of Section 4782 G. C. as amended, the county treasurer being exofficio treasurer of the school funds of said district, is the treasurer of said school teachers' pension fund.

In a school district in which a school teachers' pension fund has been established and is being maintained, and in which the board of education has provided a depository for the school funds in the manner authorized by law, and has dispensed with the treasurer of said funds under authority of said Section 4782 G. C., the clerk of said board, who is performing all the services and discharging the duties of the treasurer of such school district, is treasurer of said school teachers' pension fund. Op. Atty. Gen. (1916), p. 266.

In such case where the clerk of the school district is legally acting as the treasurer of the school district, under provision of this section, neither the board of education nor the board of trustees of said school teachers' pension fund has any authority in law to provide a depository for said fund for the purpose of relieving the clerk-treasurer as custodian of said fund of any and all liability incident to the care and custody of moneys belonging to such school teachers' pension fund. Op. Atty. Gen. (1916), p. 1092.

Where a depository has been provided for the school moneys, the clerk of said board becomes acting treasurer, and while the language of Section 4782 G. C., 104 O. L. 159, is directory, yet there is in such case no provision of law for the selection of a school treasurer by the board of education. Op. Atty. Gen. (1917), p. 228.

Where a board of education has advertised and used every effort to obtain bids for the deposit of its school funds, and such board has been unable to secure bids the city treasurer in city school districts and the county treasurer in rural and village districts becomes the custodian of the funds of the board of education.

If the funds of a city school district were left in the custody of the city treasurer, and the funds of a rural school district in the custody of the county treasurer, the boards of education of such respective school districts are legally entitled to receive the depository interest for any profits arising from the deposit of such funds by such officials.

Banks which accept deposits of school funds or funds of a public character are liable for the interest earned and profits arising from the deposit of such funds, even though they have refused to bid, for same. Op. Atty. Gen. (1918), p. 1043.

See Opinions of Attorney General as follows:

No. 1813 (1921), cited under Sec. 7694;

No. 2844 (1922), cited under Sec. 4763.

No. 3140 (1922), cited under Sec. 7690.

When clerk shall perform the duties of treasurer.

SECTION 4783. When the treasurer is so dispensed with, all the duties and obligations required by law of the county auditor, county treasurer or other officer or person relating to the school moneys of the district shall be complied with by dealing with the clerk of the board of educa-

tion thereof. Before entering upon such duties, the clerk shall give an additional bond equal in amount and in the same manner prescribed by law for the treasurer of the school district.

HISTORY.—R. S. § 4042a; 99 v. 206.

The clerk of a board of education elected by said board at its meeting on the first Monday in January under authority of Section 4747 G. C., as amended 104 O. L. 133, is required before entering upon the duties of his office to give a bond in an amount and with surety to be approved by said board, payable to the state, conditioned for the faithful performance of all the official duties required of him. The board of education in fixing the amount of said bond should take into consideration the added duties which the clerk is required to perform where the treasurer is dispensed with by the board under authority of the latter part of Section 4782 G. C., as amended 104 O. L. 158. Op. Atty. Gen. (1915), p. 2495.

SECTION 4784. If for any reason, a depository in such district ceases to act as custodian of the school moneys, they shall be placed in the custody of the treasurer of the city or county in which the school district is located as provided in section 4763. Such moneys shall be held and disbursed by the treasurer in all respects as required by law until another depository is provided for such moneys. Thereupon he shall place such money in the depository and his duties and obligations relating thereto shall then cease.

Where moneys placed when depository ceases to act.

HISTORY.—R. S. § 4042a; 99 v. 206; 104 v. 158 (159).

SECTION 2607. Each year, as soon after the assessors have made their returns as practicable, the county auditor shall make and forward to the auditor of state a statement showing the number of sheep killed or injured by dogs, the aggregate loss sustained thereby, the amount paid therefor from the tax on dogs, the amount of that fund remaining in the treasury, and the amount, if any, transferred to the school fund.

Annual report of sheep killed by dogs and amount of tax transferred to school fund.

HISTORY.—R. S. § 1052; 74 v. 179, § 11.

A per capita tax on dogs is not forbidden by the state constitution: *Holst v. Roe*, 39 O. S. 340.

SECTION 3273. At such December meeting the treasurer shall settle with the board of education of the township district, and for this purpose the treasurer of the township and the clerk and president of the board of education of the township district shall attend the meeting.

Treasurer's settlement with board of education.

HISTORY.—R. S. § 1458; 51 v. 489, § 15; S. & C. 1568; 90 v. 98; 98 v. 333.

SECTION 3315. At such March meeting, and at the expiration of the term of office of each treasurer, if the president and clerk of the board of education of the township school district fail to attend as provided by law on or before the hour of one o'clock in the afternoon, the trustees shall proceed to count the money and examine all the books and vouchers of the treasurer including the school funds of such township district. They shall cause

Examination when school officers fail to attend.



to be entered on their record, a statement setting forth the exact amount in each fund so found in the hands of such treasurer. Such record shall be signed by the trustees, and shall be prima facie evidence that the amount therein stated was actually in the treasury at that date.

HISTORY.—R. S. § 1511; 91 v. 11; 58 v. 90, § 1; S. & S. 909.

## CHAPTER 12

### PUBLIC SCHOOL ELECTIONS

#### SECTION

- 4838. Members of board of education, when elected.
- 4839. Notice of school elections.
- 4861. Qualifications of electors.
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- 4940. Registration of women.
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- 4997. Nomination of candidates for board of education.
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- 5004. When and where certificates of nomination papers shall be filed.
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- 5008. Notice of objections to be given candidate.
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#### SECTION

- 5029. When separate ballots to be provided for each precinct.
- 5031. When territory annexed to village for school purposes separate ballots, etc., to be provided for school elections.
- 5032. Names of candidates for board of education to be on independent and separate ballot without party designation.
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- 5049. Separate ballot box, poll book and tally sheets for school elections to be provided.
- 5052. How election expenses are to be paid.
- 5053. How election expenses to be apportioned.
- 5054. Tax levy to pay election expenses.
- 5092. Candidate for office not to serve as judge or clerk of election.
- 5111. How returns of November election in odd numbered years to be made.
- 5115. Canvass of election for members of board of education in registration cities.
- 5120. Canvass of vote in school elections generally.
- 5121. How election for board of education determined in certain cases.

SECTION 4838. All elections for members of boards of education shall be held on the first Tuesday after the first Monday in November in the odd numbered years.

Election of members of the board of education.

HISTORY.—R. S. § 3970-13; 97 v. 40, § 2.

SECTION 4839. The clerk of each board of education shall publish a notice of all school elections in a newspaper of general circulation in the district or post written or printed notices thereof in five public places in the district at least ten days before the holding of such election. Such notices shall specify the time and place of the election, the number of members of the board of education to be elected, and the term for which they are to be elected, or the nature of the question to be voted upon.

Notice of school elections.

HISTORY.—R. S. § 3970-11; 91 v. 182; 97 v. 354, § 2.

The provisions of 4839 General Code apply to elections on the question of centralization provided for by sections 4726 and 4726-1 General Code. Op. Atty. Gen. (1915), p. 1983.

The provisions of section 4726 General Code as amended 104 O. L. 139, taken in connection with the provisions of section 4839 General Code, authorizes the calling of a special election in a rural school district for the purpose of submitting the question of centralization to the vote of the qualified electors of such district. Op. Atty. Gen. (1915), p. 338.

Failure to publish notice of an election for members of a board of education as required by section 4839 General Code will be treated as an irregularity only, where there is no showing that

the result of the vote would have been in any way changed had publication been made as provided by law. Op. Atty. Gen. (1917), p. 2182.

Where there was failure to publish notice of an election for school board and a regular election was held under section 4838 General Code, and where there were three members of the board to be elected and the names of six candidates appeared on the ballot, the three candidates receiving the highest number of votes were duly elected members of the board and are entitled to qualify thereon. Op. Atty. Gen. (1917), p. 2182.

In an election on the question of the centralization of the schools of a number of rural school districts in a township, notice of said election must be given in each of said rural school districts in the manner provided by section 4839 General Code.

Where a board of education, or other body authorized to call a special election under the statutes, passes a resolution providing for such special election, and thereafter certifies such resolution to the board of deputy state supervisors of elections, such board, in setting the time of the election, should take cognizance of the existence of the absent voters law and the provisions of section 5080-1, relative to the rights of certain committees to witness the count, where a question or proposition has been submitted.

Ballots to be used in any election should be prepared for use not less than thirty days before the day of the election at which the same are to be used, and an absent voter has a right to make application for an absent voter's ballot and cast the same in the manner provided by law, during the period of thirty days prior to the day of the election.

Under the provisions of section 5080-1 G. C., a board of education should allow at least forty days to lapse between the time of calling such election and election day itself, where a question is to be submitted to a vote of the electors and the resolution calling the election must be furnished to the board of deputy state supervisors of elections in sufficient time, prior to such election day, that the board of deputy state supervisors of elections may have such ballots available for absent voters thirty days before the election itself. The notice of any such special school election shall be posted or published at least ten days prior to the date of such election, as provided in section 4839 G. C. Op. Atty. Gen. No. 1787, Jan. 14, 1921.

Qualifications  
of elector.

SECTION 4861. Every male citizen of the United States, who is of the age of twenty-one years or over, and possesses the qualifications in regard to residence hereinafter provided, shall be entitled to vote at all elections.

HISTORY.—Const., Art. V, § 1.

Offices for  
which women  
may vote and  
be voted for.

SECTION 4862. Every woman, born in the United States or who is the wife or daughter of a citizen of the United States, who is over twenty-one years of age and possesses the necessary qualifications in regard to residence hereinafter provided for men shall be entitled to vote and be voted for for member of the board of education and presidential elector and to vote and be voted for at any and all primaries or other elections provided for in Sections 4953, 4954 and 4955 of the General Code and upon no other question.

HISTORY.—R. S. § 3970-12; 91 v. 182; 97 v. 354, § 3; 107 v. 7; 108 v. Pt. I 699; 108 v. Pt. II 1100.

Registration  
of women.

SECTION 4940. The provisions of this chapter relating to registration shall apply to women upon whom the right to vote for member of the board of education or presiden-



tial elector is conferred by law, but the names of such women may be placed on a separate list.

HISTORY.—R. S. § 3970-12; 91 v. 182; 97 v. 654, § 3; 107 v. 7; 108 v. Pt. I 699.

SECTION 4963. Primaries under this chapter to nominate candidates for members of the house of representatives in the congress of the United States, and for all elective state, district and county offices, and to select committeemen, shall be held in each county at the usual polling places on the second Tuesday in August of the even numbered years; and primaries under this chapter to nominate candidates for township and municipal offices, justices of the peace and members of boards of education shall be held in each county at the usual polling places on the second Tuesday in August of the odd numbered years: Provided, however, that in a municipality organized under any of the provisions of sections 3515-1 to 3515-71, both inclusive, of the General Code and in townships lying wholly within and the boundaries of which are co-extensive with the boundaries of such municipality, primaries under this chapter to nominate candidates for all offices not provided for in the plan of government under which such municipality is organized shall be held in such municipality at the usual polling places on the same day on which primary elections are held to nominate the officers of such municipality provided for in its plan of government. Primaries to nominate candidates for United States senator shall be held on the second Tuesday in August of the years in which such senators are to be elected.

Time of holding primaries for state, district and county candidates.

Primaries for township and municipal candidates.

Primaries in municipalities under optional plan of government.

Primaries for nomination of U. S. senator.

HISTORY.—99 v. 214, § 11; 100 v. 7, § 11; 103 v. 476 (481); 104 v. 8 (9); 107 v. 400. This section as amended in 104 v. 8 (9) was in effect January 1, 1914.

SECTION 4997. Nominations of candidates for the office of member of the board of education shall be made by nominating papers signed in the aggregate for each candidate by not less than twenty-five qualified electors of the school district, of either sex, in village districts, and in city school districts by not less than two per cent. of the electors voting at the next preceding general school election in such city school districts.

How nominations made.

HISTORY.—R. S. § 3897a; 92 v. 149; 94 v. 305; 97 v. 340; 103 v. 275 (279).

Section 4997 General Code and other sections of the so-called Jung small school-board law, applying to city school districts, were held constitutional in the case of State, ex rel., vs. Evans, 90 O. S. 243.

Where a person filed a nomination petition for member of the board of education, which had less than 25 signers thereon, and where no objections thereto were filed or considered, and the deputy state supervisor of elections, irrespective of the number of signers, placed the name on the ballot, and at the election such person received the highest number of votes, he was duly elected as a member of said board of education, and irregularities in the making of the nomination would not affect the validity of his election. Op. Atty. Gen. (1918), p. 10.

Where the nomination papers of a candidate for member of a village school board did not contain a sufficient number of signa-

tures, no objections being raised and said candidate having been certified as nominated and elected, his election will not be invalid on account of the irregularity in his nomination. Op. Atty. Gen. (1920), p. 13.

Names of  
nominees for  
board pub-  
lished.

SECTION 4998. When nominations of candidates for member of the board of education have been made by nomination papers filed with the board of deputy state supervisors; as herein provided, such board of deputy state supervisors shall publish on two different days prior to the election a list of the names of such candidates in two newspapers of opposite politics in the school district, if there is such printed and published therein. If no newspaper is printed in such school district, the board shall post such list in at least five public places therein.

HISTORY.—R. S. § 3897a; 92 v. 149; 94 v. 305; 97 v. 340.

Where and  
when certi-  
ficates of nomi-  
nation and  
nomination  
papers shall  
be filed.

SECTION 5004. Certificates of nomination and nomination papers of candidates shall be filed as follows:

For state officers, presidential electors, United States senator and congressman-at-large, with the state supervisor of elections in the manner following. All petitions signed in any county of the state shall be filed with the board of deputy state supervisors of elections of such county prior to the sixtieth day before the date of the election and shall remain open to public inspection in the office of such board for a period of five days immediately prior to the fifty-fifth day before such election, during which time objections may be filed thereto and the same heard by such board, which shall, on or before the fiftieth day before such election, transmit such petitions and objections, if any, to the state supervisor of elections together with a copy of their findings on such objections, if any, and a certificate stating the number of bona fide electors of such county whose names appear attached thereto;

For offices to be filled by the electors of a district, or subdivision of a district, composed of two or more counties, with the chief deputy state supervisor of the county in the district, or subdivision, containing the greatest number of inhabitants, as ascertained by the last federal census, not less than sixty days previous to the day of election.

For county offices or offices to be filled by the electors of a district lying within a county, with the board of deputy state supervisors of the county, not less than sixty days previous to the date of election;

For township or municipal officers, justices of the peace, or members of the board of education, with the board of deputy state supervisors of the county, not less than sixty days previous to the date of election;

For municipal officers and for members of boards of education in municipalities, situated in two or more counties, with the board of deputy state supervisors of the county

containing the majority population of such municipality, not less than sixty days previous to the day of election.

HISTORY.—R. S. § 2966-22; 88 v. 456, § 13; 89 v. 435; 90 v. 269; 93 v. 189; 97 v. 227, § 9; 102 v. 414; 103 v. 843 (844); 104 v. 8 (10).

Under the provisions of Section 5004, General Code, the period for filing nominating petitions does not expire until the end of the 60th day previous to the day of election, and it is the duty of the board of deputy state supervisors of election to provide opportunity for the presentation of such petitions up to midnight of that day.

A nominating petition of one seeking to qualify as a candidate at an election to be held on November 2, may be filed as late as September 3. State, ex rel., vs. Board of Deputy State Supervisors, 93 O. S. 14.

Under the provisions of section 5004 General Code the period for filing nominating petitions does not expire until the end of the sixtieth day previous to the day of election; and it is the duty of the board of deputy state supervisors of elections to provide opportunity for the presentation of such petitions up to midnight of that day. State, ex rel., vs. Board of Deputy State Supervisors, 93 O. S. 14.

Where a statute requires that an act be performed a fixed number of days previous to a specified day, the last day should be excluded and the first day included in making the computation. State, ex rel., vs. Board of Deputy State Supervisors, 93 O. S. 14.

SECTION 5005. When so filed, certificates of nomination and nomination papers shall be preserved and be open, under proper regulations, to public inspection. If in apparent conformity with the provisions of this chapter, they shall be deemed to be valid unless objection thereto is duly made in writing within five days after the filing thereof.

When certificates and nomination papers deemed valid.

HISTORY.—R. S. § 2966-23; 88 v. 456, § 13; 89 v. 435; 90 v. 270; 97 v. 227, § 10.

SECTION 5006. Such objections or other questions, arising in the course of the nomination of candidates, shall be considered as follows:

For state officers, United States senator, congressman-at-large and presidential electors, by the state supervisor of elections, and his decision shall be final;

For district offices or offices in a subdivision of a district, by the chief deputies and clerks of the boards of deputy state supervisors of the several counties comprising the district or subdivision, and their decision shall be final;

For county offices and offices of a district lying within a county, by the board of deputy state supervisors of the county and its decision shall be final;

For township or municipal offices, justices of the peace, or members of the board of education, by the board of deputy state supervisors of the county, and its decision shall be final;

In municipalities situated in two or more counties, such objections or other questions may be submitted by the board of deputy state supervisors of the county where filed, directly to the state supervisor, and his decision shall be final.

HISTORY.—R. S. § 2966-23; 88 v. 456, § 13; 89 v. 435; 90 v. 270; 97 v. 227, § 10; 103 v. 843 (844); 104 v. 8 (10).

A board of deputy state supervisors of a county has the authority to reject and refuse to act upon nominating petitions which

Consideration of objections and other questions to nominations.



clearly are not in conformity with the requirements of the law, although no objections to such petitions have been filed. State ex rel. v. Lloyd 93 O. S. 20.

A court will not compel a board of state deputy supervisors to hear and determine objections to the nomination of candidates for office, the determination of which requires a recount of the ballots cast at the primary election, where the written objections are filed after the time fixed by statute for the destruction of the ballots. State ex rel. v. Swan, 91 O. S. 61.

The decision of the Secretary of State acting as state supervisor of elections, upon all questions arising in the course of nomination of candidates for office, is final. State ex rel. v. Joyce 87 O. S. 126; Chapman v. Miller, 52 O. S. 166; Randall v. State, 64 O. S. 57.

Majority necessary.

SECTION 5007. The votes of at least three deputy state supervisors for the county or a majority of the chief deputies and clerks of the district or subdivision of the district shall be necessary to a decision. In all cases under this title in the event of a disagreement, or, if no decision can be arrived at, the matter in controversy shall be submitted to the state supervisor of elections, who shall summarily decide the question so submitted to him, and his decision shall be final.

Questions may be submitted to the state supervisor in cases of disagreement.

HISTORY.—R. S. § 2966-23; 88 v. 456, § 13; 89 v. 435; 90 v. 270; 97 v. 227, § 10; 103 v. 843 (845).

Notice of objection must be given.

SECTION 5008. When any such objection is so made, or any question so arises, notice thereof shall forthwith be mailed to the candidates affected thereby and to any party committee especially interested.

HISTORY.—R. S. § 2966-23; 88 v. 456, § 13; 89 v. 435; 90 v. 270; 97 v. 227, § 10.

Vacancy by death, withdrawal, etc.

SECTION 5010. If a person nominated as herein provided die, withdraw, or decline the nomination, or if a certificate of nomination is insufficient or imperfect, the vacancy thus occasioned, may be filled or the defect corrected in the manner required for original nominations. Such nomination to fill a vacancy, or corrected certificate must be certified to the secretary of state at least thirty days or to the board of deputy state supervisors at least twenty-five days previous to the day of election. If, when the original nomination was certified, there was certified a committee authorized to represent the party, as herein provided, it may fill such vacancy.

HISTORY.—R. S. § 2966-24; 88 v. 457, § 13; 89 v. 436; 90 v. 270, § 11; 102 v. 414.

There being no nomination to fill the vacancy created by the withdrawal of a candidate, after the form of the ballot to be used at the approaching election has been sent to the deputy supervisors of elections they may properly refuse to omit the name of such candidate from the ballot. State ex rel. v. Taylor, 55 O. S. 385.

Names of candidates shall be placed on same ballot.

SECTION 5016. Except as in this chapter provided, the names of all candidates to be voted for on the first Tuesday after the first Monday in November shall be placed upon the same ballot.

HISTORY.—R. S. § 3970-14; 97 v. 40, § 3; 99 v. 399, § 3.

SECTION 5020. When the approval of a question, other than a constitutional amendment, is to be submitted to a vote, such question shall be printed on a separate ballot and deposited in a separate ballot box, to be presided over by the same judges and clerks of election.

When other question is submitted.

HISTORY.—R. S. § 2966-32; 88 v. 458, § 14; 89 v. 440; 97 v. 231, § 18.

More than one question, which may be properly submitted to a vote of the people at the same election, may be placed on one ballot. Op. Atty. Gen. (1915), p. 630.

SECTION 5029. In election precincts composed of a township or a part thereof, or a municipality or a part thereof, there shall be provided for all elections separate ballots for each precinct, so as to enable electors residing in such precinct to cast their votes for the proper candidates in such precinct; and there shall be provided separate ballots for each district portion of such precinct which shall contain the names of the candidates for members of the board of education for whom electors residing in such districts are entitled to vote.

Separate ballots for each precinct.

HISTORY.—R. S. § 2966-28; 88 v. 451, § 6; 89 v. 438, § 15; 90 v. 272; 91 v. 291; 97 v. 229; 98 v. 234, § 15.

SECTION 5031. When a territory annexed to a village for school purposes is included within such village precinct, separate ballots, ballot box, poll books and tally sheets shall be provided for such voters in municipal elections, presided over by the judges and clerks of elections of such precinct.

Territory annexed for school purposes.

HISTORY.—R. S. § 2966-28; 88 v. 451, § 6; 89 v. 438, § 15; 90 v. 272; 91 v. 291; 97 v. 229; 98 v. 234, § 15.

SECTION 5032. The names of candidates for members of the board of education of a school district, however nominated, shall be placed on one independent and separate ballot without any designation whatever, except for member of board of education and the number of members to be elected.

Ballots for school board.

HISTORY.—R. S. § 3970-10a; 91 v. 182; 97 v. 354; 98 v. 116, § 1.

SECTION 5033. The ballots for members of the board of education shall be prepared and printed as follows: The whole number of ballots to be printed for the school district shall be divided by the number of candidates for member of board of education of the district, and the quotient so obtained shall be the number of ballots in each series of ballots to be printed. The names of candidates shall be arranged in alphabetical order and the first series of ballots printed. Then the first name shall be placed last and the next series printed, and so shall the process be repeated until each name shall have been first. These ballots shall then be combined in tablets with no two of the same order of names together, except when there is but one candidate.

How ballots for school board printed.

HISTORY.—R. S. § 3970-10b; 98 v. 116, § 2.

SECTION 5034. In city school districts, the ballots for each subdistrict shall contain the names of the candidates for member of the board of education from such subdistrict and also the names of the candidates to be elected at large.

School districts in cities.

HISTORY.—R. S. § 3970-10; 91 v. 182; 97 v. 354, § 1.

Poll books and tally sheets for school elections.

SECTION 5049. There shall be separate poll books and tally sheets for all elections for school purposes and the ballots of the electors at such elections shall be deposited in a separate ballot box.

HISTORY.—R. S. § 3970-10; 91 v. 182; 97 v. 354, § 1.

Election expenses, how paid.

SECTION 5052. All expenses of printing and distributing ballots, cards of explanation to officers of the election and voters, blanks, and other proper and necessary expenses of any general or special election, including compensation of precinct election officers, shall be paid from the county treasury, as other county expenses.

HISTORY.—R. S. § 2966-27; 91 v. 243; 90 v. 271; 89 v. 438; 88 v. 451, § 5; 99 v. 84, § 14.

This section is cited and applied in the case of *Barker et al v. City of Akron*, 98 O. S. 446.

Under section 5052 General Code provision is made for the payment of school elections by the county, and there is no authority to charge back such expense against the special school district wherein such special election is held.

The statutes expressly provide further, that in a registration city, the cost of registration, and the renting and furnishings of voting places, and the cost of poll books for precincts in the city, shall be paid by the city. Therefore, such expenses will be borne by a registration city when a city school district consisting of territory within such city holds a special school election, and the balance of the expenses of said election will be paid by the county. *Op. Atty. Gen.* (1912), p. 1642.

This section held to be constitutional by the supreme court on a divided vote. *Barker v. City of Akron*, 98 O. S. 446.

Apportionment of expenses.

SECTION 5053. In November elections held in odd numbered years, such compensation and expenses shall be a charge against the township, city, village or political division in which such election was held, and the amount so paid by the county shall be retained by the county auditor from funds due such township, city, village or political division, at the time of making the semi-annual distribution of taxes. The amount of such expenses shall be ascertained and apportioned by the deputy state supervisors to the several political divisions and certified to the county auditor. In municipalities situated in two or more counties, the proportion of expense charged to each of such counties shall be ascertained and apportioned by the clerk or auditor of the municipality and certified by him to the several county auditors.

HISTORY.—R. S. § 2966-27; 91 v. 243; 90 v. 271; 89 v. 438; 88 v. 451, § 5; 99 v. 84, § 14.

Tax levy.

SECTION 5054. County commissioners, township trustees, councils, boards of education or other authorities, authorized to levy taxes, shall make the necessary levy to meet such expenses, which levy may be in addition to all other levies authorized or required by law.

HISTORY.—R. S. § 2966-27; 91 v. 243; 90 v. 271; 89 v. 438; 88 v. 451, § 5; 99 v. 84, § 14.

Under section 5054 General Code provision is made for the payment of school elections by the county, and there is no author-



ity to charge back such expense against the special school district wherein such special election is held.

The statutes expressly provide further, that in a registration city, the cost of registration, and the renting and furnishings of voting places, and the cost of poll books for precincts in the city, shall be paid by the city. Therefore, such expenses will be borne by a registration city when a city school district consisting of territory within such city holds a special school election and the balance of the expenses of said election will be paid by the county. Op. Atty. Gen. (1912), p. 1642.

SECTION 5092. No person, being a candidate for an office to be filled at an election, other than for committeeman [committeeman] or delegate or alternate to any convention, shall serve as deputy state supervisor or clerk thereof, or as a judge or clerk of elections, in any precinct at such election. A person serving as deputy state supervisor or clerk thereof, judge or clerk of elections contrary to this section shall be ineligible to any office to which he may be elected at such election.

Election officer can not be candidate except for committeeman or delegate.

HISTORY.—R. S. § 2966-17; 91 v. 118; 95 v. 47; 103 v. 496.

SECTION 5111. In November elections held in odd numbered years for township officers, justices of the peace, municipal officers and members of boards of education, the judges and clerks of elections in each precinct shall make and certify the returns to the clerk of the township or the clerk or auditor of the municipality in or for which the election is held or the clerk of the board of education of the school district, respectively, instead of to the board of deputy state supervisors of the county. This provision shall not apply to the returns of elections for assessors of real property.

Returns of November elections in odd numbered years.

HISTORY.—R. S. § 2966-8; 89 v. 459; 90 v. 61; 90 v. 266; 97 v. 223, § 8.

Where in a city of less than 50,000 population three members are elected on the school board when only two should have been elected, the better way to clear up the situation is to declare that the two members receiving the highest number of votes are elected. Op. Atty. Gen. (1913), p. 1597.

Ballots for members of township rural school district boards of education upon which the judges of elections are unable to agree as to how they should be counted should be sealed in an envelope for that purpose and returned with the returns of the election to the clerk of the board of education of the district for which such election is held. Op. Atty. Gen. (1915), p. 2197.

The board of education of the district in canvassing the returns and determining the result of such election should open and count such ballots if the choice of the voter can be determined therefrom, and preserve the same for further judicial or other investigation. If it is impossible for the board of education to determine the choice of the voter from the ballot the result of the election should then be determined exclusive of such ballots and the same preserved in like manner. Op. Atty. Gen. (1915), p. 2197.

SECTION 5115. In registration cities the returns of the election of municipal officers, members of boards of education or justices of the peace shall be made to the board of deputy state supervisors of the county in which such city is located, and canvassed by a board of canvass-

How returns made and canvassed in registration cities.

sers, consisting of such board of deputy state supervisors and the city auditor.

HISTORY.—R. S. § 2966-8; 89 v. 459; 90 v. 61; 90 v. 266; 97 v. 223, § 8.

Canvass of  
vote in school  
elections.

SECTION 5120. In school elections, the returns shall be made by the judges and clerks of each precinct to the clerk of the board of education of the district, not less than five days after the election. Such board shall canvass such returns at a meeting to be held on the second Monday after the election, and the result thereof shall be entered upon the records of the board.

HISTORY.—R. S. § 3970-10; 91 v. 182; 97 v. 354, § 1.

Under the provisions of section 5120 General Code the board of education of a school district is the authority required to canvass the returns of an election on the proposition of a bond issue of such school district. *Op. Atty. Gen. (1912), p. 507.*

Under section 5120 General Code it is the duty of the election officers of each precinct to make returns to the clerk of the board of education of the district in which such precinct is situated of the election for school purposes held therein, but the election officer so making such returns is not entitled to extra compensation therefor under section 5043 or other sections of the General Code. *Op. Atty. Gen. (1917), p. 2185.*

Sections 7626 and 7627 General Code, relating to the authority of the board of education to issue bonds for school purposes voted by the electors of the school district under section 7625 General Code, should be read in connection with the provisions of section 5120 General Code providing for the canvass by the board of education of the votes of the electors on the proposition of such bond issue; and the board of education should not provide for the issue of said bonds until such vote has been canvassed and the board has thereby determined that a majority of the electors voting on the proposition voted in favor thereof. *Op. Atty. Gen. (1917), p. 1849.*

The canvass of the returns of the vote at an election in a registration city on the proposition of a bond issue submitted by the board of education of the city school district is governed by the provisions of section 5120 General Code, and the canvass of the vote at such election should be made by the board of education in the manner therein provided and the result entered on the records of such board. The provisions of section 5115 General Code do not apply to the canvass of the returns of the vote at such election. *Op. Atty. Gen. (1918), p. 215.*

How result  
determined in  
certain cases.

SECTION 5121. In the canvass of the vote for members of the board of education, or assessors of real property, the person having the highest number of votes shall be declared elected, and the next highest, and so on, until the number required to be elected shall have been selected from the number having the highest number of votes. If any number of persons greater than the number to be elected at such election have the highest and an equal number of votes, the board making the canvass shall determine by lot which of the persons shall be duly elected.

HISTORY.—R. S. §§ 3970-10, 3970-10a; 91 v. 192; 97 v. 354, § 1; 98 v. 116, § 1; 100 v. 81, § 1.

Where in a city of less than 50,000 population three members are elected on the school board when only two should have been elected, the better way to clear up the situation is to declare that the two members receiving the highest number of votes are elected. *Op. Atty. Gen. (1913), p. 1597.*

## CHAPTER 13

### SCHOOL FUNDS

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- 12485. Sale of unclaimed stolen property.
- 12466. Proceeds of sale in school fund.
- 13007. Fines paid into school fund, accruing from offenses against minors.



Educational  
equalization  
fund; addi-  
tional for  
county.

SECTION 7575. For the purpose of affording the advantages of a free education to all the youth of the state, there shall be levied annually a tax of fifteenth hundredths of one mill on the grand list of the taxable property of the state, to be collected as are other state taxes and the proceeds of which shall constitute the "educational equalization fund," and an additional tax of two and sixty-five hundredths mills, the proceeds of which shall be retained in the several counties for the support of the schools therein.

HISTORY.—R. S. § 3951; 70 v. 195, § 126; 88 v. 159; 92 v. 59; 94 v. 81; 95 v. 439; 98 v. 256; 102 v. 266; 105 v. 5; 108 v. Pt. II 1303 (1306); 109 v. 148. For the time at which the amendment of this section in 108 v. Pt. II 1303, takes effect, see 108 v. Pt. II 1303 (1313), § 3.

A former statute authorizing a special school tax in one county of the state was held to be unconstitutional in the case of *Root v. Board of Education*, 52 O. S. 589.

Held under consideration of the Smith one per cent law (section 5649-2 et seq. G. C.), that the respective levies for county, township, municipal and school purposes are exclusive of the levies for state purposes; but that levies for all these purposes, together with the state levies, must not exceed in a given taxing district the ten and fifteen mills limitations respectively imposed under the different sections of the Smith one per cent tax law. Op. Atty. Gen. (1911), p. 1614.

Held under consideration of this and cognate provisions of the General Code that the tuition fund in the hands of a board of education is in the nature of a trust fund and that moneys in said fund cannot be transferred to other funds except in the manner specially provided by law. Held further that the common pleas court has power under section 2296 et seq. G. C., to authorize such transfer when no injury will result therefrom, but that in view of the peculiar nature of the tuition fund such action would be justified only in exceptional cases. Op. Atty. Gen. (1912), p. 1206.

The failure of the auditor of state formally to certify the one-mill levy for school purposes to be retained in the county under section 7575, General Code, among the "state taxes," for the reason that it is not to be settled for with other state taxes, does not justify the county auditor in refusing to extend the levy on the tax duplicate of the county nor in omitting to include the amount of such levy with other state taxes for the purpose of the adjustment of tax levies to be made by the budget commission. Such levy is a state levy in the same sense that it is made directly by the general assembly and is mandatory. Op. Atty. Gen. (1920), p. 709.

See opinions of Attorney General No. 2804 (1922), cited under Sec. 7731-4.

Interest upon  
proceeds of  
salt and  
swamp lands.

SECTION 7577. The state shall pay interest annually, at the rate of six per cent per annum, upon all money which has been paid into the state treasury on account of sales of lands commonly called "salt lands," and upon all money paid or which may be paid into the state treasury on account of sales of swamp lands granted to the state by act of congress. The money received from such sales shall constitute an irreducible debt of the state; and the interest shall be apportioned annually on the same basis as the state common school fund is apportioned, and distributed to the several counties as hereinafter provided.

HISTORY.—R. S. § 3952; 70 v. 195, § 132; 49 v. 40, § 1; S. & C. 1338.

This section is cited, referred to and applied in *State ex rel. v. Purcel*, 31 O. S. 352; *Oxford Township v. Columbia*, 38 O. S. 87.

SECTION 7578. The net proceeds hereafter paid into the state treasury, from the sales of swamp lands granted to the state by act of congress passed September 28, 1850, is hereby appropriated to the general fund for the support of common schools; and the state is pledged to pay the interest annually, on all sums of money paid into the state treasury, from the sales of such lands, from the receipt of such money into the treasury. The interest so arising shall be distributed, annually, to the several counties of the state, in proportion to the number of male inhabitants above the age of twenty-one as the law provides for ascertaining the apportionment of representatives. The proportion of interest due to each county shall be distributed for the support of common schools, in the respective counties, in the manner prescribed for the distribution of the common school fund.

Proceeds of  
sale of swamp  
lands.

HISTORY.—R. S. § 3952-1; 80 v. 39; 49 v. 40; S. & C. 1338.

SECTION 7579. The money which has been and may be paid into the state treasury on account of sales of lands granted by congress for the support of public schools in any original surveyed township or other district of country, and on account of the sales of minerals thereon, shall constitute the "common school fund" of which the auditor of state shall be superintendent, and the income of which must be applied exclusively to the support of public schools in the manner designated by law.

The "common  
school fund."

HISTORY.—107 v. 357 (379). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58. P. & A. Code § 7579, which was S. & C. 1335; R. S. § 3963; 70 v. 195, §§ 127, 128, was repealed in 107 v. 357 (381, 382), § 59.

For the confirmation of the sale of school lands, see appendix, § 13899.

This section has been cited, referred to and applied in the following cases: *Smith v. Hunter*, 48 U. S. 7 Howard 745; *Monroe Township v. Williams*, 13 O. 495; *State ex rel. v. Purcel*, 31 O. S. 352; *State v. Glidden*, 31 O. S. 309; *Seeley v. Thomas*, 31 O. S. 301.

The interest on common school moneys received from the sale of school lands and constituting a part of the irreducible debt of the state is to be distributed by the state to the counties at the February settlement, and by the county treasurer to the school districts at the same settlement. In case more than one school district is located within the territorial limits of an original surveyed township, section 7600 G. C. governs the distribution of such interest, except in parts of such districts located in the original surveyed township only, which are to be taken into consideration. In the event the territory of a school district is co-extensive with that of an original surveyed township there is no need of applying the rule of section 7600 G. C., because the school district will receive all the interest in such case. *Op. Atty. Gen.* (1914), p. 1071.

Depository interest on moneys paid into the state treasury since July 1, 1917, on account of sales of school and ministerial lands, and left therein uninvested by the commissioners of the sinking fund, but, together with other moneys, deposited in the state depositories, should be credited to the interest accounts in the common school fund and the ministerial fund, respectively.

Where no separate account has been kept of specific moneys placed in depositories the average rate obtained by the state on inactive deposits should be so credited.

It is erroneous to credit depository interest earned by the deposit of such funds to the general reserve fund.

The commissioners of the sinking fund have no authority respecting the control and deposit of moneys in the hands of the treasurer of state and belonging to the ministerial trust and common school funds. They may withdraw such funds for investment in specified securities, but may not control the powers and duties of the treasurer of state with respect to the deposit of general balances. *Op. Atty. Gen. (1918), p. 377.*

Accounts of  
common  
school and  
ministerial  
funds kept  
with subdivi-  
sions.

**SECTION 7580.** The auditor of state shall keep an account of the capital sum now belonging to the "common school fund," and the "ministerial trust fund." Interest thereon shall be computed by him annually for the calendar year. The auditor of state shall keep an account with and for each township or districts of country in the state, showing the capital sum in such common school fund and ministerial trust fund belonging to each such township or district of country, the interest accruing on the same and the disbursement of such interest.

**HISTORY.**—107 v. 357 (379). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58. P. & A. Code § 7580, which was S. & C. 1335; R. S. § 3954; 70 v. 195, §§128, 129, was repealed in 107 v. 357 (381, 382), § 59.

When a deviser bequeaths moneys for the use of the common school fund, such moneys must be paid over to the state, and become vested in the "common school fund." Through section 7580 G. C., such moneys then become a part of the irreducible debt of the state upon which shall be paid 6 per cent. per annum to be applied under section 7581 G. C., according to the intention of the deviser. *Op. Atty. Gen. (1911), p. 520.*

The interest on common school moneys received from the sale of school lands and constituting a part of the irreducible debt of the state is to be distributed by the state to the counties at the February settlement, and by the county treasurer to the school districts at the same settlement. In case more than one school district is located within the territorial limits of an original surveyed township, section 7600 G. C. governs the distribution of such interest, except in parts of such districts located in the original surveyed township only, which are to be taken into consideration. In the event the territory of a school district is co-extensive with that of an original surveyed township there is no need of applying the rule of section 7600 G. C., because the school district will receive all the interest in such case. *Op. Atty. Gen. (1914), p. 1071.*

Depository interest on moneys paid into the state treasury since July 1, 1917, on account of sales of school and ministerial lands, and left therein uninvested by the commissioners of the sinking fund, but, together with other moneys, deposited in the state depositories, should be credited to the interest accounts in the common school fund and the ministerial fund, respectively.

Where no separate account has been kept of specific moneys placed in depositories the average rate obtained by the state on inactive deposits should be so credited.

It is erroneous to credit depository interest earned by the deposit of such funds to the general reserve fund.

The commissioners of the sinking fund have no authority respecting the control and deposit of moneys in the hands of the treasurer of state and belonging to the ministerial trust and common school funds. They may withdraw such funds for investment in specified securities, but may not control the powers and duties of the treasurer of state with respect to the deposit of general balances. *Op. Atty. Gen. (1918), p. 377.*



SECTION 7580-1. The auditor of state shall give notice in writing at least once in every two months to the commissioners of the sinking fund of the amount of the capital sum belonging to the common school fund and ministerial trust fund that may have been paid into the state treasury subsequent to his last preceding notice arising from the sale of lands or minerals thereon granted by congress for the use of schools or the purposes of religion, with the sum of such capital so paid belonging to each township or other district of country in the state.

Bi-Monthly  
notice to  
commissioners  
of sinking  
fund.

HISTORY.—107 v. 357 (380). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

SECTION 7580-2. It shall be the duty of the commissioners of the sinking fund from time to time to draw an order for the balance of such capital sum in the common school fund and ministerial trust fund that may have been reported by the auditor of state, such order shall be presented to the auditor of state who shall issue his warrant upon the treasurer of state for the sum thereof.

Order and  
warrant for  
balance.

HISTORY.—107 v. 357 (380). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

SECTION 7580-3. The auditor of state shall open proper accounts in which he shall charge the commissioners of the sinking fund with all such orders and warrants, and credit said commissioners, with all sums of interest earned and disbursed by them for and on account of said capital sums so withdrawn by said commissioners from the state treasury.

Account with  
commissioners  
of sinking  
fund.

HISTORY.—107 v. 357 (380). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

SECTION 7580-4. It shall be the duty of the commissioners of the sinking fund from time to time to invest the moneys so withdrawn by them from the state treasury, either in bonds or other interest bearing obligations of the United States, or those for which the faith of the United States is pledged, including bonds of the District of Columbia, or in bonds or other interest bearing obligations of this or any other state of the United States, or the legally issued bonds or interest bearing obligations of any county, city, village, township, school district or other political subdivision or district of this state.

Investment of  
moneys with-  
drawn.

HISTORY.—107 v. 357 (380). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

SECTION 7580-5. The commissioners of the sinking fund shall keep an account of all such investments and interest accrued or received on account thereof, which account shall show the amount of each such investment belonging to each township or other district of country, and the interest earned or paid thereon.

Account of  
investments.

HISTORY.—107 v. 357 (380). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

Report of investments to auditor of state.

SECTION 7580-6. At least once in every two months the commissioners of the sinking fund shall report to the auditor of state the amount of such investments made subsequent to the last preceding report made pursuant to this section, showing the sum thereof belonging to each township or other district of country, together with the interest accrued and interest received by them on account of each such township or other district of country.

HISTORY.—107 v. 357 (380). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

Appropriation of interest received.

SECTION 7580-7. The interest so accrued and received on account of the portion of the whole investment that belongs to each township or district of country together with interest at the rate of six per cent per annum upon the sum of the debt owing by the state to the common school fund and the ministerial trust fund, shall, if the capital sum was derived from the sale of school lands or minerals thereon, be appropriated and used for the support of schools as provided by the act of congress of February 1, 1826, or, if the capital sum was derived from the sale of ministerial lands or minerals thereon, be appropriated and used for the purpose of religion, in each township and district of country entitled thereto, as provided by the act of congress of February 20, 1833.

HISTORY.—107 v. 357 (381).

Payment of interest into treasury to credit of proper funds.

SECTION 7580-8. Before making the February settlement with county auditors the state auditor shall draw his order upon the commissioners of the sinking fund for the sum of the interest so accrued and received at the time of so drawing such order, and the commissioners of the sinking fund shall thereupon, upon the draft of the auditor of state, pay into the state treasury to the credit of the interest account of the common school fund and the ministerial trust fund the sum of such order, and the auditor of state shall thereupon credit the account of said commissioners with the sum so paid to the treasurer of state.

HISTORY.—107 v. 357 (381). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

Bequests, etc., in trust for common school fund.

SECTION 7581. When any grant or devise of land, or donation or bequest of money or other personal property, is made to the state, or to any person, or otherwise, in trust for the common school fund, it shall become vested in such fund. When the money arising therefrom is paid into the state treasury, proper accounts thereof must be kept by the auditor of state, and the interest accruing therefrom shall be applied according to the intent of the grantor, donor, or deviser.

HISTORY.—R. S. § 3955; 70 v. 195, § 131; S. & C. 1336.

When a deviser bequeaths moneys for the use of the common school fund, such moneys must be paid over to the state, and become vested in the "common school fund." Through section 7580 G. C., such moneys then become a part of the irreducible debt of

the state upon which shall be paid 6 per cent. per annum to be applied under section 7581 G. C., according to the intention of the devisor. Op. Atty. Gen. (1911) p. 520.

SECTION 2457. The commissioners of a county may receive bequests, donations, and gifts of real and personal property and money to promote and advance the cause of education in such county. All property and money so received by the commissioners or which has been bequeathed and bestowed upon such commissioners and remains undisposed of, at their discretion, may be paid to any incorporated institution of learning in the county, or a part thereof may be used each year to defray the expenses of the teachers institute, upon such terms and conditions as the commissioners in their discretion prescribe, having reference to the terms of the trust and safety of the fund and its proper application.

Bequests for educational purposes; application of funds.

HISTORY.—R. S. § 20-1; 84 v. 211, § 1.

A county may accept a testamentary gift for the use of the schools, and it may apply the same to school purposes in compliance with the law. *Christy v. County Commissioners*, 41 O. St. 711.

SECTION 7583. In each February settlement sheet the state auditor shall enter the amount of money payable to the county treasurer on the apportionment of interest specified in section seventy-five hundred and seventy-seven, and also enter in each February settlement sheet the amount of money payable to the county treasurer on account of interest for the preceding year on the common school fund, and designate the source or sources from which the interest accrued. With each February settlement sheet he shall transmit a certified statement, showing the amount of interest derived from the common school fund payable to each original surveyed township or other district of country within the county.

Apportionment to be made in February settlement.

HISTORY.—R. S. § 3956; 70 v. 195, §§ 120, 130; S. & C. 1359.

SECTION 7584. The treasurer of each county, at each semi-annual settlement with the auditor of state, shall retain in the county treasury, from the state taxes collected by him, the amount of the funds herein mentioned shown by the settlement sheet of the auditor of state to be payable to him at that time. If such amount for any county exceeds the amount of state taxes collected therein, the auditor of state shall draw an order on the treasurer of state, in favor of the treasurer of such county, for the balance of school funds due his county, and transmit it to such county treasurer, and the treasurer of the state shall pay such order upon its presentation to him.

Funds to be retained by county treasurer.

HISTORY.—R. S. § 3956; 70 v. 195, §§ 120, 130; S. & C. 1359.

The sureties upon the bond of a township treasurer are liable for school funds which said treasurer has failed to pay over to his successor. *Cresswell v. Nesbitt*, 16 O. St. 35.



When county  
line divides  
township.

SECTION 7585. If parts of an original surveyed township or fractional township are situated in two or more counties, the amount of interest on common school fund due to such township shall be paid in the manner provided in the next two preceding sections to the treasurer of the county wherein the greatest relative portion of such township is situated. But if it be uncertain in which county such portion is situated, the amount of interest due to such township shall be paid to the treasurer of the oldest county in which any part of the township is situated.

HISTORY.—R. S. § 3957; 70 v. 195, § 130. This section number was given by mistake to § 7595, in 108 v. Pt. II 1170.

Board of edu-  
cation to fix  
rate of taxa-  
tion.

SECTION 7586. Each board of education, annually, at a regular or special meeting held between the third Monday in April and the first Monday in June, shall fix the rate of taxation necessary to be levied for all school purposes, after the state funds are exhausted.

HISTORY.—R. S. § 3958; 75 v. 101, § 4; 75 v. 526, § 56; 80 v. 17; 80 v. 129; 81 v. 178; 97 v. 349; 98 v. 9.  
See, also, G. C. § 7587.

This section has been cited and applied in the following cases: State ex rel. Zeeb, 9 O. C. C. 13; Toledo ex rel. v. Railway, 4 O. C. C. 113; State ex rel. v. School District, 20 O. C. D. 657, 76 O. St. 637; State v. Brewster, 39 O. St. 653.

Held under consideration of the provisions of this section and those of section 5649-3a relating to the time within which boards of education and other taxing authorities are required to submit their annual budgets that the first interest and sinking fund levy on account of bonds issued under section 7630-1 G. C. should be certified to the county auditor by the board of education, although the election authorizing the issue of such bonds and the resolution providing therefor are not held and passed, respectively, until shortly after the first Monday in June, and that such levy is not subject to the control of the budget commission and need not be included in the annual budget of the board of education. Op. Atty. Gen. (1919), p. 832.

Held that the provisions of this section are no longer in force but that they have been superseded by the provisions of the Smith one per cent. law, (5649-2 et seq. G. C.), and that boards of education and other local taxing authorities do not have the power to fix rates of taxation. Op. Atty. Gen. (1919), p. 1179, 1182.

Division of  
levy into four  
funds.

SECTION 7587. Such levy shall be divided by the board of education into four funds: First, tuition fund; second, building fund; third, contingent fund; fourth, bonds, interest and sinking fund. A separate levy must be made for each fund. The levy for tuition fund to the extent of one mill shall be subject only to the limitation on the combined maximum rate for all taxes levied in the school district.

HISTORY.—R. S. § 3958; 75 v. 101, § 4; 75 v. 526, § 56; 80 v. 17; 80 v. 129; 81 v. 178; 97 v. 349; 98 v. 9; 108 v. Pt. II 1303 (1307). For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

Taxes must be levied on the general duplicate through the agency of the local levying authorities and the budget commission for each purpose or fund separately.

The county auditor must distribute the proceeds of general property taxes to school districts in proportion to the levies as made on the duplicate.

No board of education or officer of a school district has any authority to vary the proportions in which the proceeds of tax levies accrue to their respective funds of the school district, except by way of transfer of funds and subject to the laws governing such transfer. Op. Atty. Gen. (1919), p. 1199.

The one-mill levy for tuition purposes authorized by the amendment of section 7587, General Code, is in addition to the three-mill limitation provided for in section 5649-3a General Code.

A levy for school purposes authorized by the electors under sections 5649-5 and 5649-5a, General Code, prior to 1920 may not be made to any extent outside of the limitations of section 5649-5b General Code. Op. Atty. Gen. (1920), p. 338.

See opinions of Attorney General No. 2220 (1921), cited under Sec. 7896-55.

SECTION 7587-1. § 1. The board of education of any school district in this state may establish and maintain a replacement fund, and for that purpose, set aside annually out of its revenue such sum as it may determine necessary for said purpose. In case of total or partial destruction of any of the property of said board of education from any cause or in case, because of the unfitness of such property, it becomes necessary at any time to demolish the same in whole or in part, such replacement fund may be used to rebuild, on the original site or elsewhere, or to restore, repair or improve the property so damaged, demolished or destroyed, and for said purposes the board of education may sell or use any of the securities or moneys of such replacement fund.

Replacement fund; establishment and maintenance of.

HISTORY.—108 v. Pt. II 1132, § 1.

See opinions of Attorney General No. 1865 (1921), cited under Sec. 7730-1.

SECTION 7587-2. § 2. Moneys or securities heretofore set aside by any board of education for the purpose specified in section 1 hereof, shall be paid into said replacement fund and constitute a part thereof whenever a replacement fund is established by a board of education.

Moneys or securities constituting fund.

HISTORY.—108 v. Pt. II 1132 (1133)\*, § 2.

SECTION 7587-3. The replacement fund may be invested in the same manner as is provided by law for the investment of the sinking fund of any school district having a bonded indebtedness, and all interest received from such investments shall form a part of said fund, and may be invested in like manner.

Investment of fund.

HISTORY.—108 v. Pt. II 1132 (1133), § 3.

SECTION 7587-4. Money shall be drawn from said fund by orders only, passed by a majority vote of the board of education, signed by the president, or by the vice president in his absence, and clerk. All securities or evidences of debt held by said board as a part of said replacement fund shall be deposited with a safe deposit company or com-

How money drawn from fund.

panies within the school district, or, if none exist, then in a place of safety to be indicated or furnished by said board, and when so deposited they shall be drawn only upon the application of the board and in the presence of three (3) designated members of a board in a city district, or upon the application of the board, and in the presence of two (2) designated members of a board of any other school district.

HISTORY.—108 v. Pt. II 1132 (1133), § 4.

When fund may be reduced or expended.

SECTION 7587-5. The replacement fund so accumulated shall not be reduced, disposed of or expended for purposes other than those specified in section 1 hereof. Whenever the replacement fund reaches the maximum amount deemed necessary by the board of education for the purposes specified in section 1 hereof, the interest received from investments of said fund may be used by the board of education for any school purpose authorized by law.

HISTORY.—108 v. Pt. II 1132 (1133), § 5.

Educational equalization fund administered by superintendent; application for participation.

SECTION 7595. The superintendent of public instruction shall administer the educational equalization fund for the equalization of educational advantages throughout the state. The board of education of any school district may at any time between the first Monday in September and the first day of October of any year apply to the superintendent of public instruction for participation in such fund. Such application shall be made in such form and shall set forth such information as the said superintendent shall prescribe. If it appears from such application that the revenue resources of the district are insufficient to enable the applicant board to conduct the schools thereof without participation in such fund, the said superintendent shall cause an inspection of the schools of the district and the accounts of the applicant board to be made. Upon such examination the superintendent of public instruction shall ascertain whether or not the proportion of pupils to teachers in the district is reasonable and proper, having regard to the topography and population of the district; whether the schedule of salaries paid to teachers is reasonable, whether the budget of contingent expenses and building enterprises is commensurate with the actual needs of the district; and whether the revenue resources of the district have been exhausted.

HISTORY.—R. S. § 3960-1; 98 v. 200, § 1; 106 v. 430; 104 v. 165; 107 v. 621 (623); 108 v. Pt. II 1170; 108 v. Pt. II 1303 (1307); 109 v. 148. For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3. The act of which this section was a part in 108 v. Pt. II 1170, was declared by the legislature to be an emergency measure in 108 v. Pt. II 1170 (1174), § 4.

See opinions of Attorney General (1918), p. 659, cited under Sec. 7691.

(1917), p. 729, cited under Sec. 7871.

(1918), p. 85, cited under Sec. 7877.

Adjustments and changes; power to order submission of question.

SECTION 7596. If, upon such examination, the superintendent of public instruction is satisfied that any adjustments or changes in local school policy and administration



should be made as a condition of participation in the educational equalization fund, he may order such adjustments and changes to be made. For this purpose he shall have power to order any local board of education or any county board of education to exercise any power of whatsoever character in them vested by law, and such order shall be complied with forthwith, as a condition precedent to any participation in such fund. If the additional levy provided for by sections 5649-4, 5649-5 and 5649-5a of the General Code has not been submitted to the electors, such order shall direct such submission for such number of years as the superintendent may deem best and for such number of mills, within the limitations imposed by said sections, as may be required in order to meet the financial needs of the district, or to exhaust its revenue resources; and if such submission is not made, or if the electors of the district do not approve the additional levy so submitted, the district shall not participate in such fund.

HISTORY.—R. S. § 3960-1; 98 v. 200, § 1; 103 v. 267; 108 v. Pt. II 1170 (1172); 108 v. Pt. II 1303 (1307); 109 v. 149. The statute of which this section was a part was declared by the legislature to be an emergency measure, see 108 v. Pt. II 1170 (1174), § 4. For the time at which the amendment of this section in 168 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

SECTION 7597. After his orders have been complied with, the superintendent of public instruction shall ascertain the probable amount required to supplement the revenues of such district in order to enable the board of education thereof to conduct the schools of the district, and he shall certify the same to the auditor of state. He shall thereafter from time to time, within the amount so ascertained, and so long as his orders are complied with draw his vouchers on the auditor of state for such sums as may be actually needed by such district. The auditor of state shall issue his warrants therefor payable out of the educational equalization fund.

When state  
aid available.

HISTORY.—R. S. § 3960-2; 98 v. 200, § 2; 104 v. 165; 108 v. Pt. II 1170 (1172); 108 v. 1303 (1308); 109 v. 149. The statute of which this section was a part was declared by the legislature to be an emergency measure, see 108 v. Pt. II 1170 (1174), § 4. For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

SECTION 7598. When a school district is composed of territory in two or more counties, the rate of taxation shall be ascertained by the board of education of such district and be certified to the auditors of the several counties, who must place it on the tax duplicate. It shall be collected as provided in section seventy-five hundred and ninety-four.

When district  
situated in  
two or more  
counties.

HISTORY.—R. S. § 3963; 97 v. 350.

SECTION 7599. The funds belonging to a district composed of territory in more than one county shall be paid by the treasurers of the other counties to the treasurer of the county having the greatest tax valuation in such district. The auditors of other counties must make settlement on account of such funds with the auditor of the county having the greatest tax valuation; and the treasurer of the dis-

To whom  
funds paid.

trict shall make the settlement with such auditor, required by section seventy-six hundred and two.

HISTORY.—R. S. § 3963; 97 v. 350.

Accounts with townships, cities, villages, and special tricts.

SECTION 2602. The auditor shall open an account with each township, city, village, and special school district in the county, in which, immediately after his semi-annual settlement with the treasurer in February and August of each year, he shall credit each with the net amount so collected for its use.

On application of the township, city, village, or school treasurer the auditor shall give him a warrant on the county treasurer, for the amount then due to such treasurer, and charge him with the amount of the warrant but the person so applying for such warrant shall deposit with the auditor a certificate from the clerk of the township, city, village, or district, stating that he is treasurer thereof, was duly elected or appointed, and that he has given bond according to law.

HISTORY.—R. S. § 1047; 56 v. 128, § 22; S. & C. 100.

Annual return to auditor of state of live stock statistics.

SECTION 2604. On or before the first day of July each year, the auditor shall make and transmit to the auditor of state an abstract of the number of horses, neat cattle, sheep, hogs, mules and asses in the county, as returned to his office by the assessors. On or before the first day of October each year, he shall transmit to the auditor of state a complete abstract of the funded and unfunded indebtedness of his county, and of each township, city, village, and school district therein as it was on the first day of September preceding, with the rate of interest payable thereon, the date of maturity, and the purpose for which it was created, and also what provision has been made for the payment of any such indebtedness, what amount has been collected, and whether remaining in the county, township, city, village, or school district treasury. To enable the county auditor to make this statement the various officers of townships, cities, villages and school districts shall furnish him with the information thereof, at such time and in such manner as he requires, and he shall furnish them blanks for that purpose.

HISTORY.—R. S. § 1049; 66 v. 26, § 2; 70 v. 251, §§ 1, 2, 3.

Penalty for neglect.

SECTION 2605. If the county auditor fails to make either of the returns required by the preceding section for ten days after the time therein limited, he shall forfeit to the state the sum of fifty dollars, to be recovered by civil action. On being informed of such default by the auditor of state, the prosecuting attorney of the county shall collect such forfeiture and pay it into the state treasury to the credit of the school fund.

HISTORY.—R. S. § 1050; 66 v. 26, §§ 2, 3.

Dog tax transferred to school fund.

SECTION 2607. Each year, as soon after the assessors have made their returns as practicable, the county auditor shall make and forward to the auditor of state a statement

showing the number of sheep killed or injured by dogs, the aggregate loss sustained thereby, the amount paid therefor from the tax on dogs, the amount of that fund remaining in the treasury, and the amount, if any, transferred to the school fund.

HISTORY.—R. S. § 1052; 74 v. 179, § 11.

SECTION 2689. Immediately after each semi-annual settlement with the county auditor, on demand, and presentation of the warrant of the county auditor therefor, the county treasurer shall pay to the township treasurer, city treasurer, or other proper officer thereof, all moneys in the county treasury belonging to such township, city, village, or school district.

Payments to  
local treas-  
urers.

HISTORY.—S. & C. 1478, R. S. § 1122; 56 v. 101, § 12; 86 v. 168; 108 v. Pt. I 561 (562); 108 v. Pt. II 1192 (1193). The amendment of this section in 108 v. Pt. I 561 does not affect pending proceedings or prior liabilities, see G. C. I § 5348-15].

See Opinions of Attorney General No. 2847 (1922), cited under Sec. 2295-6.

SECTION 2690. If a township treasurer or other proper officer so requires, or the trustees of a township, the council of a city, village, or the board of education of a school district, respectively, so direct, such moneys shall remain in the county treasury, to be drawn by the proper treasurer on the warrant of the county auditor, in sums of not less than one hundred dollars.

Money may  
remain in  
county  
treasury.

HISTORY.—R. S. § 1122; 86 v. 168; 56 v. 101, § 12; S. & C. 1478.

SECTION 2691. If a county treasurer retains, or if such local treasurer permits such moneys to remain in the county treasury, in any manner other than herein provided, he shall forfeit and pay for such offense not less than one hundred nor more than one thousand dollars, to be recovered in an action at the suit of the state, for the use of the county.

Moneys shall  
not be held  
without  
authority.

HISTORY.—R. S. § 1122; 86 v. 168; 56 v. 101, § 12; S. & C. 1478.

SECTION 2692. When the local authorities so request the county auditor may draw, and the county treasurer shall pay on such draft to township, city and village treasurers, and the treasurer of any board of education, from June twentieth and December twentieth to the date of the semi-annual distribution, each year, any sum not exceeding two-thirds of the current collection of taxes for such local authorities, respectively, including, as to boards of education, the estimated distribution of the state common school fund and the levy for school purposes retained in the county, to become due to the school district, in advance of the semi-annual settlements.

Advance pay-  
ment to local  
authorities.

HISTORY.—R. S. § 1123; 70 v. 184, §§ 1, 2, 3; 86 v. 43; 97 v. 378; 108 v. Pt. II 1303. For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.



Apportionment  
of school fund  
by county  
auditor; dis-  
tribution.

SECTION 7600. After each semi-annual settlement with the county treasurer each county auditor shall immediately apportion school funds for his county. Each city school district and each exempted village school district shall receive the full amount of the proceeds of the levy of two and sixty-five hundredths mills provided in section 7575, General Code, in the given school district. The proceeds of such levy upon property in the territory of the county outside of city and exempted village school districts shall be apportioned to each school district and part of district within the county outside of city and exempted village school districts on the basis of the number of teachers and other educational employees employed therein, and the expense of transporting pupils as shown by the reports required by law, and the balance according to the ratio which the aggregate days of attendance of pupils in such districts, respectively, bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts.

Distribution  
to teachers  
and employes.

The annual distribution attributable to teachers and employees shall be according to the following schedule: thirty-seven and one-half per centum of the salary of each teacher or educational employee receiving a salary of not less than eight hundred dollars and a like percentage of the compensation paid to each person giving instruction in trade or technical schools, extension schools, night schools, summer schools and other special school activities, but not to exceed nine hundred dollars for any teacher or educational employee or other such person. In the case of a superintendent under the provisions of section 4740 distribution shall be made of the given per centum multiplied by a fraction which represents the part of his working time not given to supervisory duties.

The annual distribution attributed to expense of transportation of pupils shall be fifty per centum of the personal service expense incurred in such transportation.

When district  
shall receive  
proportion  
of funds.

No school district shall be entitled to receive any portion of the said funds in any year until the reports of numbers, salaries and qualifications of teachers employed and aggregate days of attendance and expense of transportation of pupils have been made as required by law. The school tax levied by boards of education and collected from the several districts or parts of districts in the county shall be paid to the districts from which it was collected.

Apportionment  
of common  
school fund  
to districts.

Money received from the state on account of interest on the common school fund shall be apportioned to the school districts and parts of districts within the territory designated by the auditor of state as entitled thereto on the basis of the total enumeration of youth of school age in each whole district entitled thereto, and the enumeration of youth of school age residing in parts of districts so entitled, and all other money in the county treasury for the support of common schools and not otherwise appropriated by law,

shall be apportioned annually to the school districts and parts of districts in the county in the proportions in which such districts and parts of districts are entitled to share in the distribution of the levy of two and sixty-five hundredths mills provided in section 7575 of the General Code.

HISTORY.—R. S. § 3964; 70 v. 195, § 120; 77 v. 58; 97 v. 350; 104 v. 158 (159); 108 v. Pt. II 1303 (1308); 109 v. 149. For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

Held under consideration of the provisions of this and other cognate sections of the general code that it is the duty of the county auditor to obtain from the distribution of school funds the amount set apart under section 4744-3 G. C. for the use of the county board of education fund, regardless of the fact that such retention was not taken into account by the rural board of education in making their tax levies. Such retention is made out of all the moneys to be distributed to the several taxing districts, including the proceeds of local levies, as well as the amount to be apportioned to the district as its portion of the state common school fund, and is not to be charged against any one particular fund or levy. Op. Atty. Gen. (1914), p. 1346.

Personal property which has escheated to the state under the provisions of section 8579 G. C., is subject to distribution in the manner provided in section 7600 G. C., and, under section 7603 G. C. should be credited to the contingent fund of the school district. Op. Atty. Gen. (1915), p. 76.

The word "teachers" occurring in several sections of the General Code as relating to the basis of distribution of the state common school fund, etc., is to be taken in its ordinary sense the same as in G. C. Sec. 7600 and related sections of the General Code. Op. Atty. Gen. (1920), p. 395.

The terms "other educational employes" and "other persons" occurring in G. C. Sec. 7600 and other sections, are defined as persons giving instructions in trade schools, night schools, etc., not having the status of regular teachers. Such terms do not include non-instructional employes. Op. Atty. Gen. (1920), p. 395.

See opinions of Attorney General as follows:

No. 2804 (1922), cited under Sec. 7731-4;

No. 1864 (1921), cited under Sec. 7787.

(1920) p. 751, cited under Sec. 7787.

No. 3114 (1922), cited under Sec. 7764.

SECTION 7600-I. In cases in which any school funds are required to be distributed or apportioned to parts of school districts on the basis of number of teachers and other persons employed and aggregate attendance of pupils, the shares of such parts of districts shall be ascertained by taking the total enrollment of pupils residing in such parts of districts and comparing such enrollment with the total enrollment of pupils in the entire school districts; the proportion thus obtained shall be applied to the number of teachers and other persons employed in each whole school district and the aggregate days of attendance of pupils in each whole school district, respectively, and the result shall be considered the number of teachers and other persons employed in such parts of districts and the aggregate days of attendance of pupils therein, respectively.

Apportionment to part districts; distribution.

Distribution to such parts of districts on the basis of transportation of pupils shall be based on the number of pupils transported residing in such parts of districts.

HISTORY.—108 v. Pt. II 1303 (1309). For the time at which this act takes effect, see 108 v. Pt. II 1303 (1313), § 3.

Distribution  
of money  
after appor-  
tionment.

SECTION 7601. Immediately after such apportionment is made the auditor must enter it in a book to be kept for that purpose, and furnish a certified copy of the apportionment to each school treasurer and clerk in his county. He shall give to each of such treasurers an order on the county treasurer for the amount of money payable to him, and take his receipt therefor.

HISTORY.—R. S. § 3965; 70 v. 195, § 120.

Apportionment  
when county  
line divides  
original sur-  
veyed town-  
ship.

SECTION 7602. When an original surveyed township or fractional township is situated in two or more counties, and the land granted thereto by congress for the support of public schools has been sold, the auditor of the county to whose treasurer the interest on the proceeds of such sale is paid must apportion such interest to the counties in which such township is situated in proportion to the youth of the township enumerated in each. Such auditor shall certify to the auditor of each of the other counties the amount so ascertained to belong to the part of the township situated in his county, and transmit to the treasurer of each of such counties an order on the treasurer of his own county for such amount. The auditor of each county shall apportion the amount of such interest belonging to the part of the township in his county, to the districts or parts of districts entitled thereto as is provided for the apportionment of the state common school funds in section 7600, and certify and pay it to the proper school officers, as provided in section 7601.

HISTORY.—R. S. § 3966; 70 v. 195, §§ 121, 122; 72 v. 63, § 36; 104 v. 158 (160).

What certi-  
ficate of appor-  
tionment must  
show.

SECTION 7603. The certificate of apportionment furnished by the county auditor to the treasurer and clerk of each school district must exhibit the amount of money received by each district from the state, the amount received from any special tax levy made for a particular purpose, and the amount received from local taxation of a general nature. The proceeds of the levy of two and sixty-five hundredths mills, under section 7575, General Code, shall be employed only for the payment of salaries of superintendents and teachers and other educational employes and the transportation of pupils. Funds received from special levies must be designated in accordance with the purpose for which the special levy was made and be paid out only for such purpose, except that, when a balance remains in such fund after all expenses incident to the purpose for which it was raised have been paid, such balance will become a part of the contingent fund, and the board of education shall make such transfer by resolution. Funds received from the local levy for school purposes must be designated so as to correspond to the particular purpose for which the levy was made. Moneys coming from sources not enumerated herein except for tuition of children of non-residents shall be placed in the contingent fund.

HISTORY.—R. S. § 3967; 70 v. 195, § 60; 82 v. 92; 97 v. 350; 108 v. Pt. II 1303 (1309); 109 v. 150. For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.



A board of education may not provide that the superintendent of schools shall receive, in addition to his stated salary, all funds received for tuition of non-resident pupils, for the reason that such payment would not be a fixed salary as intended by section 7690 G. C., and would be in contravention of section 7603 G. C., which provides for special distribution of the respective funds under the control of the board. Op. Atty. Gen. (1912), p. 491.

The amount of tuition received by the school districts from outside districts should be placed in the contingent fund of the district receiving such payments, except where two or more school districts have joined to establish a joint high school in which latter event the provisions of section 7595-4 G. C. apply on and after August 18, 1919.

Under section 7690 G. C. a board of education may use its contingent fund in the payment of a superintendent, after the tuition fund has proved inadequate. Op. Atty. Gen. (1919) p. 1007.

See opinions of Attorney General, No. 1865 (1921), cited under Sec. 7730-1.

SECTION 7604. That within thirty days after the first Monday in January, 1916, and every two years thereafter, the Board of Education of any school district by resolution shall provide for the deposit of any or all moneys coming into the hands of its treasurer. But no bank shall receive a deposit larger than the amount of its paid in capital stock and in no event to exceed one million dollars, except that in case the Board of Education shall find that it will be for the best interests of any school district such bank shall be permitted to receive an amount in no event to exceed five million dollars.

Deposit of school funds; limitation of amount in one bank.

HISTORY.—R. S. § 3968; 75 v. 526, § 56; 81 v. 26; 97 v. 351; 101 v. 290; 106 v. 328; 108 v. Pt. I 20; 109 v. 216.

Section 7604 of the General Code makes it mandatory upon the board of education of a school district to establish a depository and when it fails so to do legal proceedings may be invoked to compel the same. Op. Atty. Gen. (1912) p. 329.

Held that a private bank owned by an individual has "no paid in capital stock" and therefore cannot be made a public depository of the funds of a school district under section 7604 G. C. Op. Atty. Gen. (1912), p. 1197.

Held on a consideration of the provisions of this and following sections of the General Code providing for the deposit of the funds of the school district, and of the provisions of section 7613 G. C. and related statutes requiring the board of education to set aside and appropriate funds for the use of the sinking fund commission, that the custody of such funds set aside and appropriated for the use of the sinking fund commission resides with the board of education while the control of the same is vested in the sinking fund upon requisition directed to the board. Op. Atty. Gen. (1913), p. 260.

The treasurer of a school district who deposits money in a bank other than in conformity to the provisions of the depository law is, together with the sureties upon his bond, responsible for losses sustained on failure of the bank. Mere knowledge on the part of the board of education of such deposit does not relieve the treasurer and his sureties of the liability. Op. Atty. Gen. (1915), p. 84.

The library funds of a school district follow the school funds of such district into the depository provided for said fund by the board of education of the district under authority of sections 7604 et seq. G. C.

Where the board of education of a city school district has provided a depository for the funds of such city and has dis-

pensed with the position of treasurer of said funds under authority of section 4782 G. C. the clerk of said board having succeeded to the duties of treasurer of said funds under provision of the latter part of said section 4782 G. C. is treasurer of the library fund of said district.

Where the board of education of a village or rural school district has provided a depository for the funds of said district and has dispensed with the position of treasurer of said funds, the clerk of the school district is treasurer of the library fund of the district. *Op. Atty. Gen. (1915), p. 2309.*

The treasurer of village or township funds who continues to act as treasurer of the school fund of the district after a depository has been provided under section 7604 at seq. G. C., is not entitled to compensation for such service. *Op. Atty. Gen. (1917), p. 192.*

A contract establishing a depository as provided by G. C. 7604 et seq., was made on January 31, 1916, for one year. Held that the board of education should enter into a new contract to extend to the period within thirty days after the first Monday of January, 1918. *Op. Atty. Gen. (1917), p. 142.*

Money in the sinking fund of a school district must remain in the custody of a school board and its treasurer and the sinking fund commissioners exercise control of such money only through the officers of the school board. The sinking fund commissioners may withdraw funds for its own purpose only by requisition directed to the board of education. *Op. Atty. Gen. (1917), p. 720.*

The surplus and undivided profits of a bank, whether incorporated or unincorporated, do not constitute a part of its "paid in capital stock" for the purpose of the school district depository law. *Op. Atty. Gen. (1918), p. 1435.*

The amount of school funds that may be deposited in a bank by a board of education under authority of section 7604 G. C. cannot, in any case, or under any circumstances, exceed the amount of the bank's paid in capital stock. *Op. Atty. Gen. No. 2986, Apr. 13, 1922.*

See opinions of Attorney General No. 2844 (1922), cited under Sec. 4763.

Deposit, when district contains two or more banks; bond of depository.

**SECTION 7605.** In school districts containing two or more banks such deposit shall be made in the bank or banks, situated therein, that at competitive bidding offer the highest rate of interest which must be at least two per cent. for the full time funds or any part thereof are on deposit. Such bank or banks shall give a good and sufficient bond, or shall deposit bonds of the United States, the state of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, at the option of the board of education, in a sum not less than the amount deposited. The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond. But no contract for the deposit of school funds shall be made for a longer period than two years.

**HISTORY.**—R. S. § 3968; 75 v. 526, § 56; 81 v. 26; 97 v. 351; 101 v. 290; 106 v. 328.

The duty of the board of education to deposit the money of the school district on competitive bidding is such an obligation of public interest and right as to permit an individual taxpayer to maintain a mandamus suit to compel such action upon the part of the board of education. *Op. Atty. Gen. (1911), p. 372.*

Inasmuch as it is mandatory upon the board of education to place the deposits in the bank offering the highest rate of interest for the same, members of the board of education who are stockholders in, or officers of, the bank making the best bid are not criminally liable for making such bank the depository. Op. Atty. Gen. (1912), p. 1246.

It is not necessary for a county treasurer to give a bond as school treasurer, when he becomes the treasurer of the school funds of a village or rural school district. Op. Atty. Gen. (1914), p. 1765.

The treasurer of a school district who deposits money in a bank otherwise than in conformity to the provisions of the depository law is, together with the sureties upon his bond, responsible for losses sustained by failure of the bank. Mere knowledge by the board of education of such deposit does not relieve the treasurer and his sureties of the liability. Op. Atty. Gen. (1915), p. 84.

The board of education of a school district in which but one bank is located having determined by resolution to invite bids from the several banks in the county, including the banks located in said school district, should let the contract for the deposit of its funds to the bank or banks offering the highest rate of interest for the full time the funds, or any part thereof, are on deposit. Op. Atty. Gen. (1915), p. 936.

For prescribed form of hypothecation of bonds as collateral security for the deposit of funds of a school district in a bank duly designated as a depository for such funds under provisions of section 7604 et seq. G. C. see Op. Atty. Gen. (1916), p. 388.

Where two banks are located in the school district, one with a paid in capital stock of \$50,000 and the other with a paid in capital stock of \$25,000, the board of education may designate either or both of said banks as a depository for the school funds.

Where more money comes into the hands of the board of education through the issue of bonds than can lawfully be deposited in the banks of such district by reason of the limit of the paid in capital stock of such bank or banks being reached, such board may contract with outside banks for the excess.

If a board of education fails or refuses to establish a depository for its school funds the members of such board become liable in a sum of at least two per cent. on the average daily balance of such funds and shall also be liable for any loss of such funds. Op. Atty. Gen. (1917) p. 1658.

Where a member of a board of education is also a director and stockholder of a bank, which with two other banks, has bid the same and highest rate of interest for the deposit of the funds of such board of education, such funds should be apportioned between the three banks offering such highest rate of interest. Such award would not be invalid under section 4757 G. C., because of the interest of the member of the board of education. Op. Atty. Gen. (1918), p. 337.

Where a school district contains two or more banks, and the board of education has used its best efforts without avail to secure bids for the deposit of the school funds under section 7605 G. C., and such board finds that there are no other banks "conveniently located" as provided in section 7607 G. C., and such funds are deposited in the county treasury under authority of section 4763 G. C., the members of such board are not liable for interest on the school fund as provided in section 7609 G. C.

It is within the discretion of the board of education to determine when banks are "conveniently located" within the meaning of section 7607 G. C., and the bureau of inspection and supervision of public offices cannot control such discretion, except in case of fraud, collusion, or clear abuse of such discretion.

The phrase "conveniently located" as used in section 7607 G. C., cannot be defined so as to apply in all cases. It should be considered in connection with the particular circumstances of each case. Op. Atty. Gen. (1918), p. 402.



Bids.

SECTION 7606. The board shall determine in such resolution the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given. All proceedings in connection with such competitive bidding and deposit of moneys must be so conducted as to insure full publicity and shall be open at all times to public inspection. If in the opinion of a board of education there has been any collusion between the bidders, it may reject any or all bids and arrange for the deposit of funds in a bank or banks without the district as hereinafter provided for in districts not having two or more banks located therein.

HISTORY.—R. S. § 3968; 75 v. 526, § 56; 81 v. 26; 97 v. 351.

In receiving bids and letting a contract for the deposit of public funds by a board of education, under sections 7606 and 7608, General Code, providing that full publicity be given in connection therewith, such provisions are mandatory, and substantial compliance therewith must be had.

Where a board of education directs its clerk to give notice of the receiving of bids for the deposit of the funds of the district, under section 7606, General Code, and the clerk in pursuance thereof gives only verbal notice to the banks within the district, such notice cannot be said to meet the demands of the statute providing that all proceedings in connection with such competitive bidding and deposit of moneys must be so conducted as to insure full publicity. State, ex rel., v. Kenton Board of Education. 103 O. S. 54. (July 5, 1921.)

Contract of  
board and  
bank.

SECTION 7607. In all school districts containing less than two banks, after the adoption of a resolution providing for the deposit of its funds, the board of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest, which shall not be less than two per cent. for the full time the funds or any part thereof are on deposit. Such bank or banks shall give good and sufficient bond, or shall deposit bonds of the United States, the state of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, at the option of the board of education, in a sum at least equal to the amount deposited. The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks, and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond.

HISTORY.—R. S. § 3968; 75 v. 526, § 56; 81 v. 26; 97 v. 351; 101 v. 290.

The deposit of the funds of a school district wherein there is no bank is governed by section 7607 G. C., which provides for a contract by the board with a conveniently located bank offering the highest interest. Such a contract is within section 4757 G. C., and such contract when made by and between the board of education and the bank is void if a member of the board of education is both a stock holder and director in such bank. Op. Atty. Gen. (1912), p. 254.

The board of education of a village school district within which there is no bank cannot contract without publicity with a bank outside of said school district for the deposit of school funds when a member of the board of education is a director and stock-

holder in said bank for two reasons: First, section 7607 and section 7608 G. C., in such case require such proceedings to be sufficiently public to enable banks conveniently located to compete for the contract and thereby enable the board to select the bank offering the highest rate of interest; second, under section 4757 G. C., such a contract is void when a member of such board of education is pecuniarily interested as a stockholder in such contracting bank. Op. Atty. Gen. (1912), p. 295.

The board of education of a school district in which but one bank is located, having determined by resolution to invite bids from the several banks in the county, including the bank located in said district, should let contracts for the deposit of its funds to the bank or banks offering the highest rate of interest for the full time the funds, or any part thereof, are on deposit. Op. Atty. Gen. (1915), p. 936.

Where a contract was entered into under the provisions of this section establishing a bank as a depository of the school funds on January 31, 1916, for a period of one year, held that the board of education should enter into a new contract for the deposit of its funds for a period extending to within thirty days after the first Monday in January, 1918. Op. Atty. Gen. (1917), p. 142.

SECTION 7608. The resolution and contract in the next four preceding sections provided for, shall set forth fully all details necessary to carry into effect the authority therein given. All proceedings connected with the adoption of such resolution and the making of such contract must be conducted in such a manner as to insure full publicity and shall be open at all times to public inspection.

What resolution to contain.

HISTORY.—R. S. § 3968; 75 v. 526, § 56; 81 v. 26; 97 v. 351.

A board of education of a village school district within which there is no bank cannot contract without publicity, with a bank for the deposit of the school funds, when a member of the board of education is a director and stockholder in said bank for two reasons: First, Section 7607 and Section 7608 of the General Code require such proceedings to be sufficiently public to enable banks conveniently located to compete for the contract; and thereby enable the board to select the bank offering the highest rate of interest; and second, under Section 4757 of the General Code such a contract is void where a member of the board of education is pecuniarily interested as a stockholder in such contracting bank. Op. Atty. Gen. (1912), p. 295.

SECTION 7609. When a depository is lawfully provided, and the funds are deposited therein, the treasurer of the school district and his bondsmen shall be relieved from any liability occasioned by the failure of the bank or banks of deposit or by the failure of the sureties therefor, or by the failure of either of them, except as above provided in cases of excessive deposits. Upon the failure of the board of education of any school district to provide a depository according to law the members of the board of education shall be liable for any loss occasioned by their failure to provide such depository, and in addition shall pay to the treasurer of the school funds two per cent on the average daily balance on the school funds during the time said school district shall be without a depository. Said moneys may be recovered from the members of the board of education for the use and benefit of the school funds of

When treasurer not liable.

When board of education liable.

the district upon the suit of any taxpayer of the school district.

HISTORY.—R. S. § 3968; 75 v. 526, § 56; 81 v. 26; 97 v. 351; 101 v. 290; 106 v. 328 (329).

The treasurer of a school district who deposits money in a bank otherwise than in conformity to the provisions of the school funds depository law, is, together with the sureties upon his bond, responsible for losses sustained by failure of the bank. Mere knowledge by the board of education of such deposit does not relieve the treasurer and his securities of liability. Op. Atty. Gen. (1915), p. 84.

If a board of education fails or refuses to establish a depository for its school funds the members of such board shall become liable in the sum of at least 2 per cent. on the average daily balance of such funds and shall also be liable for any loss of such funds. Op. Atty. Gen. (1917), p. 1658.

First mortgage loans as security for deposit of public money.

SECTION 2288-1. In addition to the undertaking or security provided for in sections 2732, 4295, 7605 and 7607, it shall be lawful to accept first mortgages, or bonds secured by first mortgages bearing interest not to exceed six per cent per annum, upon unincumbered real estate located in Ohio, the value of which is at least double the amount loaned thereon. If the amount loaned exceeds one-half the value of the land mortgaged, exclusive of the structures thereon, such structures must be insured in an authorized fire insurance company, or companies, in an amount not less than the difference between one-half the value of the land exclusive of structures, and the amount loaned, and the policy or policies shall be assigned to the mortgagee. The value of such real estate shall be determined by valuation made under oath by two resident freeholders of the county where the real estate is located, who are conversant with real estate values. There shall be deposited with said mortgage, an abstract of title made by some competent person or persons or company, accompanied by the opinion of a competent attorney, which opinion shall certify that the mortgage is a first lien upon the premises mortgaged, or said title shall be guaranteed by a company organized under, and which has complied with the provisions of section 9850 of the General Code.

HISTORY.—106 v. 434; 108 v. 719, § 1.

When county commissioners shall make levy.

SECTION 7610. If a board of education in a district fails in any year to estimate and certify the levy for a contingent fund as required by this chapter, or if the amount so certified is deemed insufficient for school purposes, the commissioners of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any or all such duties and acts, in the same manner as the board of education by this title is authorized to perform them.

HISTORY.—R. S. § 3969; 72 v. 59, § 59; 97 v. 352; 99 v. 51; 107 v. 621 (623).

This section does not authorize the county commissioners to interfere with the judicial acts of a board of education unless such acts show a gross abuse of discretion. Board of Education vs.



County Commissioners 10 O. N. P. (N. S.) 505; Board of Education vs. Shaul 4 O. N. P. (N. S.) 433.

If the levy made by a board of education for school purposes is insufficient, the remedy is by application to the county commissioners in this section. State ex rel. vs. School District 20 O. C. C. (N. S.) 423, 76 O. S. 637.

Where under Section 7610 G. C., the commissioners, by reason of the failure of the board of education to do so, have made an appointment to fill a vacancy on such board of education, such appointment can be made only for the unexpired term. Op. Atty. Gen. (1912), p. 1146.

See opinions of Attorney General (1916), p. 79, cited under Sec. 7713.

Where the county board of education has assumed control of the schools in a local school district under the provisions of section 7610-1 G. C., the moneys expended by the county board in such local district become a charge against the local district and the amounts so paid from the general fund in the county treasury by the county board of education shall be retained from the proper funds due such local school district at the time of making the semi-annual distribution of taxes.

Where the county board of education has assumed control of the schools in a local school district because of the default of the local board and the funds of such local district are exhausted, it becomes the duty of the board of education in the local district to raise the money necessary to meet the obligations incurred in such district by the county board of education in keeping the schools going.

For local school purposes boards of education in local districts may levy a tax to the extent of three mills irrespective of all limitations upon vote of the electors, as set forth in sections 5649-4, 5649-5 and 5649-5a G. C.

For the funding of those obligations which are valid, existing and binding, including the pay of teachers, janitors and school drivers, local boards of education may borrow, or issue bonds without a vote of the electors, in the manner provided in sections 5656 and 5658 G. C. Op. Atty. Gen. No. 1889, Mar. 2, 1921.

SECTION 7610-1. If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or to provide for the continuance of any school in the district for at least thirty-two weeks in the year, or to provide for each school an equitable share of school advantages as required by this title, or to provide suitable school houses for all the schools under its control, or to elect a superintendent or teachers, or to pay their salaries, or to pay out any other school money, needed in school administration, or to fill any vacancies in the board within the period of thirty days after such vacancies occur, the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all of such duties or acts, in the same manner as the board of education by this title is authorized to perform them. But in a city district, or in an exempted village district, the probate court, or in counties in which the probate court and the court of common pleas have been combined, the court of common pleas, upon being advised and satisfied thereof, shall act instead of the county board of education. All salaries and other money so paid by the county board of education, or by the probate

County board may act on neglect of district board.

court, or by the court of common pleas, shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education, or by the judge of the probate court, or by the judge of the court of common pleas, as the case may be, but they shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes.

HISTORY.—107 v. 621 (623); 109 v. 553.

A county board of education has no right under Section 7610-1 G. C. (107 O. L. 623), to establish a high school in a village district where the village board of education refuses to do so. Op. Atty. Gen. (1917) p. 1640.

Held that where a school district neglects to pay an obligation incurred by it by reason of the attendance of pupils of such district at a high school in another school district, the county board of education upon investigation shall make such payments as are necessary and charge the same against the board of education of the school district primarily liable. Op. Atty. Gen. (1919), p. 547.

The fact that a board of education has determined to erect a new school building and has submitted the question of a bond issue for the same to the electors of the district and has issued said bonds and received the money to build said building, but neglects or refuses to proceed with the erection thereof, is not such neglect of duty, in the absence of other facts, in violation of the powers enumerated in section 7610-1 G. C. that will warrant the county board of education to perform the duties of the local board in erecting said building. Op. Atty. Gen. No. 1792, Jan. 15, 1921.

Where a board of education refuses or neglects to pay its normal or deficiency contributions to the state teachers retirement system, such local board of education is in dereliction of its duty and recourse should be had by those concerned to the provisions of section 7610-1, which provides that the county board of education, or the probate court, as the case may be, shall discharge the duties which have been neglected by the local board of education, and where money has been paid out from the county general fund by those authorized for the local board of education, such sum shall be a charge against the school district for which the money was paid. Op. Atty. Gen. No. 3149, May 26, 1922.

See opinions of Attorney General No. 3115 (1922), cited under Sec. 7622-4.

Personal liability of board members.

SECTION 7611. The members of a board who cause such failure shall be each severally liable, in a penalty not to exceed fifty dollars nor less than twenty-five dollars, to be recovered in a civil action in the name of the state upon complaint of any elector of the district, which sum must be collected by the prosecuting attorney of the county and when collected, be paid into the treasury of the county, for the benefit of the school or schools of the district.

HISTORY.—R. S. § 3969; 72 v. 59, § 59; 97 v. 352; 99 v. 51.

See opinions of Attorney General (1916), p. 796, cited under Sec. 7713.

Duty of county auditor.

SECTION 7612. The auditor of each county shall collect, or cause to be collected, all fines and other money for the support of common schools in his county, and pay them to the county treasurer. He also must inspect all accounts

of interest accruing on account of section sixteen, or other school lands, whether it is payable by the state or by the debtors; and take all proper measures to secure to each school district in his county the full amount of school funds to which it is entitled.

HISTORY.—R. S. § 3970; 70 v. 195, § 120.

SECTION 8369. From the proceeds of such property, such person, association, or company, shall pay all the necessary costs and expenses of the sale, and all proper charges for freight and storage of the property sold, apportioning such expenses and charges, as near as may be, among the articles sold, to the amount received for each and hold any overplus, subject to the order of the owner thereof, at any time within one year after the sale, upon proof of ownership by affidavit of the claimant or his attorney. After the expiration of one year, all such sums unclaimed shall be paid into the state treasury, to be placed to the credit of the common schools. Any article remaining unsold may be again offered as above provided, until sold.

Disposition of proceeds of sale by common carriers.

HISTORY.—R. S. § 3225; 74 v. 18, § 4; S. & S. 94; S. & C. 258.

SECTION 2924. When a tree or trees standing or growing on any land belonging to the state, or to any school district, are, without lawful authority, cut down, or in any way injured, the prosecuting attorney shall prosecute the wrong-doer, and seize all timber so cut down if it can be found, and sell it at public vendue on five days' notice. After the payment of any fees due the county surveyor for information in such cases, he shall pay the proceeds into the county treasury to the credit of the auditor of state or school district, as the case may be.

Injuries to timber on school lands.

HISTORY.—R. S. § 1279; 40 v. 57, §§ 1, 3; S. & C. 442; S. & C. 445.

SECTION 5814. Suits to recover the penalties provided for in section fifty-eight hundred and ten shall be brought in the name of the state of Ohio, on complaint of a person aggrieved, before a justice of the peace, or other court having jurisdiction where the offense is committed. The person offending shall pay the amount of penalties adjudged, with costs. Money collected as penalties shall be paid into the treasury of the township where such offense was committed, for the use of common schools therein.

How penalties collected, and disposition thereof to school fund.

HISTORY.—R. S. § 4204; 62 v. 185, § 3; S. & S. 8; S. & C. 72.

SECTION 9405. Every corporation which shall violate any of the provisions contained in section 9403, or in section 9404, shall forfeit and pay any sum not less than one hundred dollars nor exceeding five hundred dollars, to be recovered by action in the name of the state and the amount so recovered, shall be paid to the county treasurer for the benefit of the common school fund.

Penalty to be paid into common school fund.

HISTORY.—R. S. § 3631-5; 90 v. 345, § 2; 86 v. 220; 102 v. 509.



Forfeitures to be paid into state common school fund.

SECTION 9591. The statement of such a company, whose capital is composed in whole or part of notes, in addition to what is above required, shall exhibit the amount of notes which originally formed its capital, and also what proportion of such notes is still held by the company and considered capital. Every company organized under a law of this state which fails to make and deposit such statement, or to reply to an inquiry of the superintendent of insurance with respect to it, shall be subject to a forfeiture of five hundred dollars, and an additional five hundred dollars for every month it thereafter continues to transact any business of insurance, to be recovered by action in the name of the state, and, on collection, paid into the state treasury for the benefit of the state common school fund.

HISTORY.—R. S. § 3655; 84 v. 5; 83 v. 416; 69 v. 140, § 19; S. & S. 212.

Limitations on action to forfeit charter of corporation.

SECTION 12340. Nothing in this chapter contained shall authorize an action against a corporation for forfeiture of charter, unless it be commenced within five years after the act complained of was done or committed; nor shall an action be brought against a corporation for the exercise of a power or franchise under its charter, which it has used and exercised for a term of twenty years; nor shall an action be brought against an officer to oust him from his office, unless within three years after the cause of such ouster, or the right to hold the office, arose.

HISTORY.—R. S. § 6789; 36 v. 68, § 26; S. & C. 1270.

A school district was incorporated and acted as a corporation for thirty-eight years, and then quo warranto was brought by the state against the individual members of its board of education, but the district was not made a party; limitation was pleaded, against which it was urged that G. C. § 12340 did not apply against the state. Judgment of ouster: *Hamlin v. State*, ex. rel., 22 Bull. 279.

Disposition of fines in quo warranto proceedings.

SECTION 12343. Fines collected under the provisions of this chapter must be paid into the treasury of the proper county for the use of the common schools therein.

HISTORY.—R. S. § 6792; 36 v. 68, § 25; S. & C. 1270.

Sale of unclaimed stolen property.

SECTION 12465. Property stolen, embezzled or obtained under false pretenses, remaining in the possession of an officer and unclaimed by the owner for three months after the trial of the person charged with the larceny, embezzlement or false obtaining thereof, or for one year after the property came into the custody of such officer, if the person so taking it is not arrested, or being arrested escapes, shall be sold at auction to the highest bidder under the direction of the prosecuting attorney, after public notice of such auction in a newspaper printed in the county.

HISTORY.—R. S. §§ 1280, 1281; 66 v. 287, §§ 209, 210.

SECTION 12466. The proceeds of such sale shall be paid to the treasurer of the county for the use of the common school fund. Proceeds of sale in school fund.

HISTORY.—R. S. § 1280; 66 v. 287, § 209.

SECTION 13007. The fines collected under this subdivision of this chapter shall inure to the benefit of the school fund of the district where the offense was committed. Fines paid into school fund, accruing from offenses against minors.

HISTORY.—99 v. 32, § 3.

## CHAPTER 14

### SCHOOL DISTRICT SINKING FUND AND ISSUE AND SALE OF BONDS

SECTION	SECTION
7614. Appointment of board of commissioners of sinking fund of school district.	2295-10. Fiscal officer of political subdivision to certify to bond issuing authority maximum maturity of bonds of indebtedness.
7615. Investment of sinking fund.	2295-11. Interest on bonds to be included in cost of construction of building, utility or improvement.
7616. Sinking fund commissioners may issue refunding bonds.	2295-12. Bonds issued by school districts and other political subdivisions to be serial bonds maturing in substantially equal annual installments.
7617. Report of sinking fund commissioners.	2295-13. All moneys collected from taxes or other sources for the payment of final judgments against political subdivision to go into separate "judgment fund."
7618. Payment of bonds and interest.	2295-14. Board of sinking fund commissioners of school district to exercise powers under existing laws to retire outstanding bonds of school district.
7619. Bonds issued by board of education to be first offered to board of commissioners of sinking fund.	5654. Proceeds of special tax or bond issue not to be used for other purposes; transfer of surplus.
1465-58. Bonds of school district to be offered to industrial commission of Ohio after rejection by board of commissioners of sinking fund of school district.	5655. Board of education may issue certificates of indebtedness in anticipation of the collection of current revenues.
1465-58a. Industrial commission to determine denomination of bonds purchased by it; how such bonds to be printed.	5656. Board of education may issue bonds for purpose of funding existing indebtedness, when.
2294. How sale of school bonds to be advertised.	5657. Issue of bonds for the purpose of funding existing bonded indebtedness at lower rate of interest.
2295. Amount for which school bonds may be sold. When same may be sold at private sale.	5658. Indebtedness of school district not to be funded unless same determined to be existing valid and binding obligation.
2295-1. Signatures on bonds of city school district may be certified by registrar.	5659. Levy of taxes to pay principal and interest on funding bonds.
2295-2. City school districts authorized to appoint registrar; how compensation to be paid.	5659-1. Board of education authorized to issue bonds when 50% tax collection is enjoined.
2295-3. Certified transcript of proceedings to be furnished to the successful bidder for school bonds.	5659-2. Application to payment of bonds of moneys thereafter received.
2295-4. Penalty for certifying false transcript or statement.	710-111. Securities designated in which investment may be made.
2295-5. Reissue of lost or destroyed bonds or certificates.	9660. Idle funds of building and loan association; how invested.
2295-6. Definitions of terms in act relating to issue of bonds by political subdivisions.	
2295-7. School districts not to create or incur indebtedness for current operating expenses.	
2295-8. Issuance by political subdivisions of bonds to pay judgment on non-contractual obligations.	
2295-9. Maturities of bonds issued by political subdivisions for various purposes.	

Who to provide funds; management and control.

SECTION 7614. The board of education of every district shall provide by a tax levy for the payment of the annual interest on its bonded indebtedness, for the payment of its serial bonds as they mature, and for a sinking fund for the extinguishment of its other bonded indebtedness, which funds shall be managed and controlled by a board of commissioners designated as the "board of commissioners of the sinking fund of....." (inserting the name of the district)' which shall be composed of five electors thereof, and be appointed by the common pleas court of the county in which such district is chiefly located, except that, in city or village districts the board of commissioners of the sinking fund of the city



or village may be the board of the school district. Such commissioners shall serve without compensation and give such bond as the board of education requires and approves. Any surety company authorized to sign such bonds may be accepted by such board of education as surety. The cost thereof, together with all necessary expenses of such commissioners, shall be paid by them out of the funds under their control.

HISTORY.—R. S. § 3970-1; 90 L. L. 97; 97 v. 352, § 1; 109 v. 345.

The board of commissioners of the sinking fund of a school district appointed under this section, is entitled to the management and control of said fund for the payment of debts and investment of the surplus without dictation, but it is not entitled to the custody or possession of the moneys of said fund. Orders drawn on said fund must be drawn by the president and clerk of the board of education in favor of the person entitled thereto upon requisition made upon them by said board of sinking fund commissioners. *State ex rel vs. Board of Education 3 O. N. P. (N. S.) 401.*

Upon failure of the court of common pleas to appoint a board of sinking fund commissioners under this section, the control of the sinking fund of the school district in a municipality devolves upon the trustees of the sinking fund of the municipality, and not upon the board of education of the school district. In such case an issue of bonds of the municipality should be offered to the board of trustees of the municipality in its capacity as such, and also in its capacity as the board of commissioners of the sinking fund of the school district, before the same are advertised and sold under sections 3923 and 3924 General Code. *Railway Company vs. Norwalk 22 O. C. C. (N. S.) 590.*

Sections 7687 and 7613 G. C., provide for the creation of a sinking fund for the payment of bonds and interest out of the board of education levy, and Section 7614 provides for the appointment of commissioners of the sinking fund, through the common pleas court.

These sections are mandatory and the interest on the money borrowed by reason of exhaustion of funds for the payment of teachers should be paid from such sinking fund and should not be paid from either the tuition or the contingent fund. *Op. Atty. Gen. (1912), p. 1519.*

Where serial bonds are issued by a board of education for school district purposes, Section 11 of Article XII of the State Constitution requires provision to be made for an annual levy of taxes and for both interest and sinking fund purposes during the entire number of years between the incurring of the indebtedness and the date of the maturity of the last of the series; and where the resolution of the board of education providing for the issue of serial bonds bearing the date of March 1, 1918, by its terms provides that the first annual levy for interest and sinking fund purposes shall be made in 1919, such resolution is illegal and not in conformity to the letter or spirit of said constitutional provision. *Op. Atty. Gen. (1918), p. 684.*

See on same point *Op. Atty. Gen. (1914), p. 1224.*

Held under a consideration of the provisions of this and related statutes that the custody of funds set aside and appropriated by the board of education for the use of the sinking fund commissioners rests with the board of education and its treasurer, while the control of the same is vested in the sinking fund commissioners; and the commissioners of the sinking fund may withdraw moneys in such fund for their own proper purposes only by requisition directed to the board of education. *Op. Atty. Gen. (1913), p. 260.*

Under Section 7614 G. C., it is the mandatory duty of a board of education having a funded debt, to levy taxes for the retirement of the bonds and for the payment of interest thereon, and to create

a sinking fund commission; and even though such commission be not created, a levy specifically made for the payment of bonds and interest must be credited to the sinking fund and separated from other funds of the district.

The purpose of the sinking fund cannot be considered to have been accomplished until the bonds for which it is intended to provide, have been fully paid, and there is never a surplus in the sinking fund for the purposes of transfer until all bonds and interest outstanding are paid and discharged. Op. Atty. Gen. (1913), p. 1139.

The resolution of a board of education providing for the issuance of bonds for the construction or improvement of school property must provide for the annual levy and collection of taxes to pay the interest on said bonds, and to cover an aliquot part of the bonded indebtedness thus created. The tax levies on account of the principal of such bonds should not be made substantially different for the several years during which the bonds are to run; and if such bonds are to be issued in series, and the sinking fund levies in the strict sense are not provided for, the levies on account of principal being limited to that which is payable in any year, the series must be so arranged as that substantially equal amounts of principal shall mature in each year of the life of the bonds. Op. Atty. Gen. (1918), p. 873.

Investment of sinking funds.

SECTION 7615. The board of commissioners of the sinking fund shall invest that fund in bonds of the United States, of the state of Ohio, of any municipal corporation, county, township or school district of any state or in bonds of its own issue. All other funds received from such investments shall be deposited as other funds of such sinking fund, and reinvested in like manner. For the extinguishment of any bonded indebtedness included in such fund, the board of commissioners may sell or use any of the securities or money of such fund.

HISTORY.—R. S. § 3970-2; 90 L. L. 97; 97 v. 353; 98 v. 45, § 2.

Sinking fund commissioners may issue refunding bonds.

SECTION 7616. The board of commissioners of the sinking fund may refund, extend or renew the bonded debt of the school district or any part thereof, existing April 25, 1904, by issuing the bond of such school district for such periods, not exceeding twenty years, in such denomination, payable at such place and at a rate of interest not to exceed the rate previous to such refunding, extension or renewal. But the aggregate amount of the refunding, extending or renewing bonds so issued shall not exceed that of the bonds so refunded, extended or renewed.

HISTORY.—R. S. § 3970-3; 90 L. L. 97; 97 v. 353, § 3.

Report of sinking fund commissioners.

SECTION 7617. The board of commissioners of the sinking fund shall make an annual report to the board of education giving a detailed statement of the sinking fund for each year ending with August thirty-first. Such report must be filed with the board of education on or before September thirtieth of each year and other reports may be required by such board of education when deemed necessary.

HISTORY.—R. S. § 3970-4; 90 L. L. 97; 97 v. 353; 98 v. 45, § 4.

SECTION 7618. The board of education shall appropriate to the use of such sinking fund any taxes levied for the payment of interest on its bonded indebtedness, together with the sum provided for in section seventy-six hundred thirteen and seventy-six hundred fourteen. Sums so appropriated shall be applied to no other purpose than the payment of such bonds, interest thereon and necessary expenses of such sinking fund commission.

Payment of  
bonds and  
interest.

HISTORY.—R. S. § 3970-4; 90 L. L. 97; 97 v. 353; 98 v. 45, § 4.

After making the appropriation required by G. C., Sec. 7618, for necessary expenses of the sinking fund commission, the board of education is not required to fix an aggregate amount for certain employees of the commission and apportion such amount among such employees. Op. Atty. Gen. (1920), p. 493.

SECTION 7619. When a board of education issued [issues] bonds for any purpose, such issue first shall be offered for sale to the board of commissioners of the sinking fund, who may buy any or all of such bonds at par. Within five days of the time when notice is given, the board shall notify the board of education of its action upon the proposed purchase. After that time the board of education shall issue any portion not purchased by such commission according to law.

Bonds issued  
by board of  
education.

HISTORY.—R. S. § 3970-4; 90 L. L. 97; 97 v. 353; 98 v. 45, § 4.

Where specific power is given by the legislature authorizing a board of education to issue negotiable bonds for school purposes upon certain conditions prescribed, the regularity of the proceedings of the board cannot be disputed, where the bonds upon their face purport to have been issued under the law in question, and where they have been sold by the board and afterward passed into the hands of a bona fide holder.

Mandamus is the proper remedy to compel the board to apply moneys already in their treasury for that purpose toward the payment of such bonds, and to levy such taxes as may be necessary to complete such payment. *State ex Robertson vs. Board of Education, Perrysburg Township*, 27 O. S. 96.

A board of education which, having first offered an issue of bonds to the board of the sinking fund commissioners of the school district and to the Industrial Commission of Ohio, has advertised the sale of said bonds bearing a certain rate of interest and has received no bids for the same, and which then proceeds by resolution to raise the rate of interest on said bonds must again offer said bonds to the board commissioners of the sinking fund of the school district, if such there be, and then to the Industrial Commission of Ohio prior to again advertising the same for sale. Op. Atty. Gen. (1915) p. 133.

Where a school district has no bonded indebtedness and a board of sinking fund commissioners has not been created, the board of education of the district in the issue and sale of its bonds, is not required to procure the appointment of a board of commissioners of the sinking fund for the district before proceeding to offer such bonds to the Industrial Commission and to advertise and sell such bonds, or any part thereof not purchased by said Industrial Commission. Op. Atty. Gen. (1915), p. 407.

SECTION 1465-58. The state industrial commission shall have the power to invest any of the surplus or reserve belonging to the state insurance fund in bonds of the United States, the state of Ohio, or of any county, city, village or

Securities in  
which state in-  
surance fund  
may be in-  
vested.



school district, or any conservancy district of the state of Ohio, at current market prices for such bonds; provided that such purchase be authorized by a resolution adopted by the industrial commission and approved by the governor; and it shall be the duty of the boards or officers of the several taxing districts of the state in the issuance and sale of bonds of their respective taxing districts, to offer in writing to the state industrial commission, prior to advertising the same for sale, all such issues as may not have been taken by the trustees of the sinking fund of the taxing district so issuing such bonds; and said industrial commission shall, within ten days after the receipt of such written offer either accept the same and purchase such bonds or any portion thereof at par and accrued interest, or reject such offer in writing; and all such bonds so purchased forthwith shall be placed in the hands of the treasurer of state, who is hereby designated as custodian thereof, and it shall be his duty to collect the interest thereon as the same becomes due and payable, and also the principal thereof, and to pay the same, when so collected, into the state insurance fund. The treasurer of state shall honor and pay all vouchers drawn on the state insurance fund for the payment of such bonds when signed by any two members of the state industrial commission, upon delivery of said bonds to him when there is attached to such voucher a certified copy of such resolution of the state industrial commission authorizing the purchase of such bonds; and the state industrial commission may sell any of said bond upon like resolution, and the proceeds thereof, shall be paid by the purchaser to the treasurer of state upon delivery to him of said bonds by the treasurer.

HISTORY.—103 v. 76; 109 v. 525.

Printing or  
lithographing  
of bonds.

Denomination  
of bonds.

SECTION 1465-58a. All bonds of any taxing district of Ohio purchased by the industrial commission of Ohio shall be printed or lithographed upon paper of the size and the interest coupons shall be attached thereto in the manner required by the industrial commission. The principal and interest of such bonds shall be payable at the office of the treasurer of the state of Ohio. Such bonds shall be of the denomination required by the industrial commission in its resolution to purchase, or the industrial commission may in its resolution to purchase require that all bonds of any series of bonds purchased by it from any taxing district of Ohio shall be consolidated and issued as one bond, the principal amount of which shall be equal to the aggregate amount of all the bonds of said series, which principal together with the interest thereon, shall be payable in installments evidenced by and payable upon the surrender of combined principal and interest coupons attached thereto, which coupons shall each separately state the amounts of principal and interest included therein. The proper officers of each taxing district issuing such bonds are hereby authorized and required without additional procedure or legisla-

tion on their part to comply with the provisions of this act, except that the proper accounting officer of such taxing district and the secretary of its sinking fund shall make and keep a detailed record of any such changes required by the industrial commission. Provided, however, that the industrial commission shall not be authorized to change the date of any part of the principal or interest of any bond issue, nor shall it require a bond of any issue to be a larger denomination, nor any partial payment of principal to be of greater amount than the aggregate amount of such issue falling due at any date.

Taxing authorities empowered to comply with act.

HISTORY.—108 v. Pt. I 277; 109 v. 47.

SECTION 2294. All bonds issued by boards of county commissioners, boards of education, township trustees, or commissioners of free turnpikes, shall be sold to the highest bidder after being advertised once a week for three consecutive weeks and on the same day of the week, in a newspaper having general circulation in the county where the bonds are issued, and, if the amount of bonds to be sold exceeds twenty thousand dollars, like publications shall be made in an additional newspaper having general circulation in the state. The advertisement shall state the total amount and denomination of bonds to be sold, how long they are to run, the rate of interest to be paid thereon, whether annually or semi-annually, the law or section of law authorizing the issue, the day, hour and place in the county where they are to be sold.

Advertisement of sale of public bonds.

HISTORY.—R. S. § 22b; 80 v. 68, § 1; 106 v. 492.

If bonds issued by the board of education of a school district under section 7626 General Code are not taken by the board of commissioners of the sinking fund of the school district as authorized by section 7619 General Code, or are not purchased by the Industrial Commission of Ohio under section 465-58 General Code, such bonds must be advertised for sale, and the board of education is not authorized to dispense with competitive bidding in the sale of such bonds. Op. Atty. Gen. (1915), p. 133.

A board of education which has advertised the sale of bonds bearing a certain rate of interest and has received no bids for the same, and which then proceeds by resolution to raise the rate of interest on said bonds, must again offer said bonds to the board of commissioners of the sinking fund of the school district, if such there be, and then to the Industrial Commission of Ohio prior to again advertising the bonds for sale. Op. Atty. Gen. (1915), p. 133.

Where bonds are sold at public sale in conformity with law no expense in connection with the delivery of such bonds to the purchaser is payable from public funds. Op. Atty. Gen. (1917), p. 2028.

SECTION 2295. None of such bonds shall be sold for less than the face thereof with any interest that may have accrued thereon, and the privilege shall be reserved of rejection of any or all bids. When such bonds have been once advertised and offered at public sale, as provided by law, and they, or any part thereof, remain unsold, those unsold may be sold at private sale at not less than their par value and accrued interest. All moneys from the

How bonds shall be sold.

principal on the sale of such bonds shall be credited to the fund on account of which the bonds are issued and sold, and all moneys from premiums and accrued interest on the sale of such bonds shall be credited to the sinking fund from which said bonds are to be redeemed.

HISTORY.—R. S. § 22b; 80 v. 68, § 1; 106 v. 492 (493).

As the statutes contain no reasonable ground from which to deduce an intent to the contrary, the general rule that interest follows the fund would govern, so that interest upon the proceeds of bonds sold for the purpose of meeting the expense of a particular improvement, will not be turned over to the sinking fund trustees nor to the contingent fund, but will be credited to the special fund created by the bond issued and expended for the purpose of the fund. After the accomplishment of such purpose all balance of said fund will go to the sinking fund as provided in sections 3804 and 5654 General Code. Op. Atty. Gen. (1920), p. 1100.

Endorsement.

SECTION 2295-1. That all bonds hereafter issued by any county, city or city school district within this state, except those issues permanently held by the sinking fund trustees of the municipality issuing same, may have, endorsed thereon, a certificate attesting the genuineness of the signatures thereto, signed by a registrar legally authorized and qualified to act therein.

HISTORY.—101 v. 256, § 1.

Registrar; appointment and compensation.

SECTION 2295-2. That every county, city or city school district within this state having the power to issue such bonds, shall have the power to employ such registrar, the compensation of which together with all proper expenses incident to such certification shall be paid on the allowance of such authority out of the county, city or city school district treasury or fund benefited or to be benefited by the sale of such bonds, as the case may be.

HISTORY.—101 v. 256, § 2.

Certified transcript of proceedings required to be furnished successful bidder for bonds by certain officers.

SECTION 2295-3. That it shall be the duty of the clerk, or other officer having charge of the minutes of the council of any municipal corporation, board of county commissioners, board of education, township trustees, or other district or political subdivisions of this state, that now has or may hereafter have, the power to issue bonds, to furnish to the successful bidder for said bonds, a true transcript certified by him of all ordinances, resolutions, notices, and other proceedings had with reference to the issuance of said bonds, including a statement of the character of the meetings at which said proceedings were had, the number of members present, and such other information from the records as may be necessary to determine the regularity and validity of the issuance of said bonds; that it shall be the duty of the auditor or other officer, having charge of the accounts of said corporation or political subdivision, to attach thereto a true and correct statement certified by him of the indebtedness, and, of the amount of the tax duplicate thereof, and such other information as will show whether

Attached statement of indebtedness by auditor.



or not said bond issue is within any debt or tax limitation imposed by law.

HISTORY.—103 v. 179, § 1.

The statute requiring a municipality or other public body issuing bonds to furnish a transcript of the proceeding relating to such bond issue to the successful bidder affects the rights of the purchaser of the bonds on such bid so as to make a distinction between him and those persons who may purchase said bonds from him without notice and in reliance upon recitals upon the fact of the bonds. Op. Atty. Gen. (1914), p. 1433.

SECTION 2295-4. Any such clerk or officer, or any deputy or subordinate thereof, who shall knowingly make or certify a false transcript or statement in respect to any of the matters hereinafter set forth, shall be guilty of a misdemeanor and be fined not less than twenty-five (\$25.00) dollars, nor more than five hundred (\$500.00) dollars, or imprisoned not exceeding one year, or both.

Penalty for certifying false transcript or statement.

HISTORY.—103 v. 179, § 2.

SECTION 2295-5. Whenever bonds, notes or certificates of indebtedness, issued by a municipal corporation, school district, county, township, or other political subdivision or taxing district of this state, are lost or destroyed, said corporation, school district, county, township, subdivision or district may reissue to the holders duplicates thereof in the same form and signed as the original obligations were signed, which obligation so issued shall plainly show upon its face as being a duplicate of such lost bond, note or certificate, upon proof of such loss or destruction and upon being furnished with a bond of indemnity against all loss or liability for or on account of the obligations so lost or destroyed.

Reissue of lost or destroyed bonds or certificates.

HISTORY.—106 v. 303, § 1.

Duplicate copies of lost or destroyed securities provided for in section 2295-5 General Code may be either written or printed. An exact copy of the original security should be made and marked "duplicate," and it would be good practice on the part of the issuing officer of the taxing sub-division to attach a certificate that the duplicate is a true copy. Such issuing officer should exact satisfactory proof as to the loss or destruction of the original bond and he is also empowered to exact proper indemnity. Op. Atty. Gen. (1916), p. 599.

Section 2295-5 General Code authorizes the reissuance of a bond or of a coupon detached from a bond and lost or destroyed, upon compliance with the conditions therein stipulated. Proof of loss by affidavit would be sufficient for the purposes of said section; and an indemnity bond executed in compliance with the provisions of said section must be deemed a sufficient safeguard to protect the taxing district against double payment in the course of many years time. Op. Atty. Gen. (1919), p. 401.

SECTION 2295-6. Definitions—The following definitions shall be applied to the terms used in this act:

Definition of terms used.

(a) "Political subdivision" shall mean any political subdivision or taxing district of the state incurring indebtedness or issuing bonds on the general credit of the political subdivision or taxing district;

(b) "Charter municipality" shall mean any municipality which at the time of incurring any indebtedness or issuing any bonds is operating under a charter framed and adopted under the provisions of Article XVIII of the constitution of Ohio;

(c) "Fiscal officer", in the case of a county, shall be the county auditor; in the case of a charter municipality, such officer as by virtue of the charter has the duties and functions provided in section 4284 of the General Code of Ohio; in the case of any other city, the city auditor, and of any other village, the village clerk; in the case of a school district, the clerk of the board of education; in the case of a township, the auditor of the county in which such township is located; in the case of any other political subdivision, the officer who by law performs the duties and functions similar to those of a city auditor;

(d) "Serial bonds" are those which provide for the retirement of the indebtedness by means of installment maturities in lieu of a sinking fund;

(e) The "bond-issuing authority" shall, in the case of any bond issue, be the county commissioners, board of education, township trustees, city council or other board or officer who, under the provisions of law or charter, has the function of determining upon the issuance of such bonds.

HISTORY.—109 v. 336.

Where a serial bond issue, under the Griswold taxation Act (H. B. 33) is dated April 1, 1922, the first bond of such issue cannot be made to fall due earlier than the date of the final tax settlement between the county treasurer and the taxing district next following the inclusion of a tax for such serial issue in the annual June budget by the county auditor, which date, falling after August 10, 1923, would be determined by the provisions of section 2689 G. C., and such serial bonds may not be issued so that the first bond shall mature later than eleven months after such final settlement between the county treasurer and the taxing district. Op. Atty. Gen. No. 2847, Feb. 8, 1922.

Subdivisions shall not incur indebtedness for current operating expenses.

SECTION 2295-7. No county, school district, township, municipality, including charter municipalities, or other political subdivision shall, with the exceptions hereinafter named, create or incur any indebtedness for current operating expense. The acquisition or construction of any property, asset or improvement with an estimated life or usefulness of less than five years shall be deemed current expense. This prohibition shall not apply to borrowing as provided by law in anticipation of collection of special assessments or in anticipation of special assessments or current revenues or for defraying the expenses of an extraordinary epidemic of disease or emergency expenses made necessary by sudden casualty which could not have reasonably been foreseen or for deficiency created by enjoining taxes as provided in section 5659-1 of the General Code or for paying final judgments upon non-contractual obligations as provided in section 4 thereof. The estimate of the life of the property, asset or improvement proposed to be ac-

quired or constructed from the proceeds of any bonds, shall be made in any case by the fiscal officer of the subdivision and certified by him to the bond-issuing authority and shall be binding upon such authority.

HISTORY.—109 v. 336.

SECTION 2295-8. When the fiscal officer of any county or other political subdivision, including charter municipalities, certifies to the bond-issuing authority that, within the limits of its funds available for the purpose, the subdivision is unable, with due consideration of the best interests of the subdivision, to pay a final judgment rendered against the subdivision in an action for personal injuries or based on other non-contractual obligation, then such subdivision may issue bonds, in an amount not exceeding the amount of the judgment and carrying interest not to exceed six per cent, for the purpose of providing funds with which to pay such final judgment.

When bonds may be issued to pay final judgment.

HISTORY.—109 v. 337.

SECTION 2295-9. That the maturities of bonds issued by counties and other political subdivisions, including charter municipalities, shall not extend beyond the following limitations as specified in the following classification, the period to be measured from the date of the bonds.

Periods beyond which bonds issued by subdivisions may not run; classification.

Bonds issued for—

Class (a)—the acquisition of real estate or easements or other interests in real estate, grade crossing elimination, and flood prevention, thirty years;

Class (b)—the construction of improvement of fire-proof buildings or other structures, widening of roads, highways, streets or alleys, general waterworks improvements, sanitary and storm sewers, sewage disposal works, and bridges, twenty-five years;

Class (c)—the construction of improvement of non-fireproof buildings or other structure, electric light plant and equipment, police and fire alarm and telegraph systems, fifteen years;

Class (d)—waterworks meters, fire apparatus, road rollers, furniture and furnishings, machinery in garbage disposal plant, land-scape planting, playground apparatus, sidewalks, curbs, gutters, and the construction, reconstruction, resurfacing, grading, or drainage of roads, highways, streets, or alleys, ten years;

Class (e)—motor vehicles other than fire apparatus, wagons and horses, bonds issued to pay judgments for personal injuries or other non-contractual obligations and also for defraying the expenses of an extraordinary epidemic of disease, five years;

Class (f)—purposes not included in the foregoing classes, such number of years not exceeding thirty as is the estimated period of usefulness of the asset, improvement, or other purpose, such estimate to be made by the fiscal officer;



Class (g)—a single bond issue for a purpose which includes two or more of the foregoing classes, the average number of years of usefulness as measured by the weighted average of the amounts proposed to be expended for said several classes in accordance with above table of maturities; such estimating and calculation of average to be made by the fiscal officer.

HISTORY.—109 v. 333.

The provisions of sections 2295-9 and 2295-10 of the General Code limiting the maturities of bonds issued for particular purposes by subdivisions of the state must be complied with as to all bonds issued after January 1, 1922, though legislation authorizing their issuance may have been fully adopted prior to that date. Op. Atty. Gen. No. 3137, May 5, 1922.

Certification of maximum indebtedness by fiscal officer before passage of ordinance, resolution, etc., for issue of bonds; contents of certification.

SECTION 2295-10. Before any resolution, ordinance or other measure providing for the issuance of bonds or incurring of indebtedness of any county, or other political subdivision, including charter municipalities, is passed or adopted, the fiscal officer thereof shall certify to the bond-issuing authority the maximum maturity of such bonds or indebtedness, calculated in accordance with the provisions of the foregoing section, and no such bonds, shall be authorized or issued or indebtedness incurred with maturities extending beyond the maturities as thus certified by such fiscal officer. Where the proposed indebtedness falls within class (g), such certification shall also contain a schedule of the respective amounts of the proposed bonds falling within each of classes (a) to (f) inclusive. The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class shall not exceed the amount allotted in said schedule to said class; provided, however, that whenever the bond-issuing authority deems such transfer to be necessary for the carrying out of the purpose of the bond issue, then such authority may transfer any unexpended portion of the amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may be made from any class to a class with a shorter maturity.

HISTORY.—109 v. 338.

What cost of construction may include.

SECTION 2295-11. The cost of construction of any building, utility or improvement may be construed to include interest payable during construction on bonds issued for such construction. A sum not to exceed one year's interest on any bond issue may be included in the amount of the issue to the extent necessary to care for interest maturing previous to the receipt of the taxes or assessments from which such interest is to be ultimately paid.

HISTORY.—109 v. 343.

SECTION 2295-12. All bonds hereafter issued by any county, municipality, including charter municipalities, school district, township or other political subdivision, shall be serial bonds maturing in substantially equal annual installments beginning not earlier than the date fixed by law for the final tax settlement between the county treasurer and the political subdivision or taxing district next following the inclusion of a tax for such issue in the annual budget by the county auditor as provided by law and not later than eleven months thereafter.

General provisions relating to the issue of bonds.

HISTORY.—109 v. 344.

Under the Griswold taxation act (H. B. 33), while the maturities of serial bonds issued must be annual maturities due on a day following each final tax settlement, the interest payments upon such serial bonds may be made semi-annually. Op. Atty. Gen. No. 2901, Feb. 25, 1922.

See opinions of Attorney General, No. 2847 (1922), cited under Sec. 2295-6.

SECTION 2295-13. All moneys collected from taxes or other sources for the payment of final judgments against the political subdivision (other than condemnation of property cases) shall go into a separate fund of the subdivision, to be known as "Judgment Fund." All powers and obligations now vested by law in any board of sinking fund trustees or commissioners of any county, school district, municipality or other political subdivision relating to the receipt, investment and application of funds raised by taxation or otherwise for the payment of said final judgments are hereby transferred to the treasurer of the subdivision. By an affirmative vote of not less than three-fourths of the members elected or appointed thereto, the county commissioners, board of education, city council or other chief tax levying authority of a political subdivision may transfer to the judgment fund from the bond payment or other fund of the subdivision any surplus in the latter not needed for the purpose of meeting the interest and retirement of the funded debt of the subdivision and which it deems necessary for the prompt payment of the said final judgment; provided that no such transfer shall be made from the sinking fund without the approval of the sinking fund trustees or commissioners.

"Judgment Fund" transfers to.

HISTORY.—109 v. 345.

SECTION 2295-14. The board of sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in sections 2976-18 to 2976-27 inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district to be retired by means of a sinking fund shall have been paid; and thereupon it shall be deemed to be abolished and its functions and powers relating to the purchase and sale of securities,

Sinking fund officers continue to exercise powers until outstanding bonds are retired; thereafter powers transferred to treasurer.

receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and functions as set forth in said provisions of law as amended in this act shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said moneys, securities and assets and all moneys received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provisions of law, into its sinking fund shall be paid to its treasurer and placed and held by him in a separate fund to be known as "Bond Payment Fund" and subject to the provisions of law relating to transfer to other funds, said fund shall be applied by him to the purposes for which the sinking fund had theretofore been applicable.

HISTORY.—109 v. 347.

Proceeds of special levies shall not be used for other purposes; transfer of surplus.

SECTION 5654. The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund.

HISTORY.—R. S. § 2834; 75 v. 132, § 1; 92 v. 77; 103 v. 521.

This section does not confer upon the trustees of the political sub-division therein named the wide range of discretion with respect to the transfer of funds, such as are conferred upon the court of common pleas by the provisions of sections 2296, 2302 inclusive, General Code; and proceedings relating to a transfer of funds under this section must be construed strictly. *State ex rel. vs. Sayre*, 12 O. N. P. (N. S.) 337.

The proceeds of bonds issued by the board of education of a school district for the purpose of purchasing a site whereon to erect a high school building and for the construction of such building, may not be used by said board for the erection of a grade school building. *Op. Atty. Gen.* (1916), p. 1778.

A board of education is not authorized to invest funds at its disposal; and where such board has in the building fund money as the proceeds of a bond issue for the purpose of erecting a school building in the school district, the money should be used for such purpose. If the project of erecting such school building is abandoned for any reason, these monies under the authority of section 5654 General Code should be passed to the school district for the purpose of retiring outstanding bonds as they mature, and the interest thereon. The monies will then be subject to the management and control of the board of sinking fund commissioners of the



school district, and may be invested by such board in the manner authorized by section 7615 General Code. Op. Atty. Gen. (1918), p. 497.

See opinions of Attorney General No. 1998 (1921), cited under Sec. 7625.

SECTION 5655. In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest.

Anticipation of current revenues, of county, township or school district; limitation.

HISTORY.—R. S. § 2834; 75 v. 132, § 1; 92 v. 77. Repealed, 103 v. 521 (522), § 6; 109 v. 337.

Since January 1, 1922, a board of education, in anticipation of the collection of current revenues in any fiscal year, may under the provisions of section 5655 (H. B. 33) borrow money and issue certificates of indebtedness, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances, nor shall such certificates run for a longer period than six months or bear a greater rate of interest than six per cent, nor shall they be sold for less than par with accrued interest. Op. Atty. Gen. No. 3149, May 26, 1922.

SECTION 5656. The trustees of a township, the board of education of a school district and the commissioners of a county, for the purpose of extending the time of payment of any indebtedness created or incurred before the first day of January, 1924, which from its limits of taxation such township, district or county is unable to pay at maturity, may borrow money or issue the bonds thereof, so as to change, but not increase the indebtedness in the amounts, for the length of time and at the rate of interest that said trustees, board or commissioners deem proper, not to exceed the rate of six per cent per annum, payable annually or semi-annually.

Authority to issue bonds extending indebtedness incurred prior to Jan. 1, 1924, by county, township or school district.

HISTORY.—R. S. § 2834a; 92 v. 6; 92 v. 33; 93 v. 233; 97 v. 514; 109 v. 339.

Under section 5656 General Code the board of education is disjunctively authorized to issue bonds or borrow money for the purpose of funding valid existing and binding indebtedness under the limitations prescribed in sections 5656 and 5658 General Code. And where the services of teachers have been performed, the board may borrow money on notes issued by the board to pay for such services when it is unable to meet the same by reason of the limits of taxation applying to such school district. Op. Atty. Gen. (1912), p. 1844.

A board of education may borrow money under section 5656 General Code to pay obligations incurred in furnishing the transportation to pupils which the law requires to be furnished, such expenses being a charge against the district, regardless of the existence

of sufficient funds in the school district treasury, and the contract for transportation being in the nature of an employment contract. Op. Atty. Gen. (1914), p. 1394.

A board of education may borrow money under section 5656 General Code for the purpose of paying unpaid installments of teachers salaries. Op. Atty. Gen. (1915), p. 328.

Bonds may not be issued under this section, however, unless within the limitations of the law interest and sinking fund levies sufficient to retire them may be made during the years for which they are to run. Such interest and sinking fund levies being preferred to current levies by section 5649-1 General Code, the board should anticipate its needs for current purposes and its needs for interest and sinking fund purposes and so apportion its indebtedness as not to impair its future revenues for either purpose. Op. Atty. Gen. (1915), p. 328.

A board of education not having fully exercised the authority conferred by law to levy taxes for sinking fund and interest on bonds falling due, is not authorized to borrow money or issue bonds for the purpose of extending or refunding said indebtedness under the provisions of section 5656 General Code. Op. Atty. Gen. (1915), p. 523.

The board of education of a rural school district may borrow money under the authority of section 5656 General Code to pay a charge against said district made by the board of education of a county district, in which such rural school district is located, in case said county board of education furnishes transportation to pupils of said rural district as required by section 7731 General Code, when the local board fails or neglects to furnish such transportation, or to pay for services actually rendered under a contract of employment for this purpose. Op. Atty. Gen. (1915), p. 1246.

A county board of education has no authority in law to levy a tax for any purpose and may not, therefore, borrow money under section 5656 General Code for the purpose of paying for the transportation of pupils, furnished by said county board under provisions of section 7731 General Code. Op. Atty. Gen. (1915), p. 2112.

Where a board of education of a school district, properly organized and in the exercise of the authority conferred upon it by the provisions of sections 4749 and 5656 General Code borrows money under the conditions prescribed in said section 5656 General Code, and for the purpose mentioned in said section, and in consideration therefor issues the note for the sum of money so borrowed, the members of said board of education may sign the corporate name of the board of education to said note or they may authorize one or more of the officers of said board to sign said name to said note. Op. Atty. Gen. (1916), p. 469.

The only indebtedness that a board of education of a school district is authorized to fund under the provisions of sections 5656 and 5658 General Code is such indebtedness as represents an accrued existing, valid and binding legal obligation of the school district. Where a board of education, instead of issuing bonds for the purpose, borrows money from a bank or banks for the purpose of creating a fund out of which to pay bills or estimates for labor or material thereafter furnished in the completion of a school building, such transaction, for want of authority in the board of education to borrow money for such purpose in this manner, does not have the effect of creating a legal indebtedness to such bank or banks which the board of education is authorized to fund by the issue and sale of bonds under the provisions of the above mentioned sections of the General Code. Op. Atty. Gen. (1918), p. 81.

Under the provisions of 5656 General Code a board of education is only authorized to fund and thereby extend the time of payment of existing indebtedness of such school district by an issue of bonds when such indebtedness cannot be paid at maturity by reason of the limits of taxation of such school district. Under said section such board of education is not authorized to fund existing indebted-

ness of the school district by an issue of bonds simply for the reason that the board of education may find and determine that it is to the best interests of the school district to do so. Op. Atty. Gen. (1918), p. 159.

A board of education may fund unpaid pay-rolls of teachers and other employees by borrowing money or issuing bonds under section 5656 General Code. Op. Atty. Gen. (1919), p. 514.

In the employment of teachers the board of education is not limited by the amount of revenue which may be certainly anticipated, and may therefore adopt a salary budget dependent for success upon the approval by the electors of a special levy.

Employment contracts made in accordance with such budget being lawful, the rendition of service thereunder gives rise to an obligation of the district, so that if funds are not available to discharge the obligation when accrued, money may be borrowed therefor under section 5656 General Code without other limitation than the amount be actually due and unpaid. Op. Atty. Gen. (1920), p. 646.

A board of education may issue bonds or borrow money under section 5656 General Code to pay unpaid installments of teachers' salaries increased during the terms of employment of such teachers. Op. Atty. Gen. (1920), p. 395.

A board of education may not borrow money under section 5656 General Code at a rate of interest exceeding six per cent. Op. Atty. Gen. (1920), p. 1230.

A board of education may borrow money under section 5656 General Code for the purpose of extending the time of payment of any legal indebtedness whatever, regardless of the fund in which the indebtedness exists. Op. Atty. Gen. (1920), p. 1230.

Where a school district cannot participate in the state reserve fund by reason of the electors having failed to vote for the maximum levy, and as a result there is not a sufficient fund to continue the school for thirty-two weeks, the failure of said levy will not excuse the discontinuance of the schools and the board of education may borrow money under the provisions of section 5656 General Code to pay valid and binding obligations made for said purpose. Op. Atty. Gen. (1920), p. 873.

See opinions of Attorney General, No. 2220 (1921), cited under Sec. 7896-55.

See opinions of Attorney General, No. 1889 (1921), cited under Sec. 7610.

SECTION 5657. When the trustees of a township, board of education of a school district or commissioners of a county have issued bonds subject to call or redemption previous to the maturity thereof, and it appears to said trustees, board or commissioners to be for the best interest thereof to exercise such privilege of call or redemption by means of the refunding of such indebtedness at a lower rate of interest than is provided in said bonds, then such trustees, board or commissioners may issue for that purpose new bonds with semi-annual interest coupons attached which shall not in any case exceed in amount the outstanding bonded indebtedness subject, as aforesaid, to call or redemption and proposed to be called, redeemed and refunded. The maturity of the bonds so issued shall not extend beyond the time of the maturity of the called, redeemed and refunded bonds.

Power to issue new bonds, when.

HISTORY.—R. S. § 2834a; 92 v. 6; 92 v. 33; 93 v. 233; 97 v. 514; 109 v. 340.

Held, that this section as it then read authorized the issue of new bonds in exchange for outstanding bonds, but that it did not



authorize the issue and exchange of bonds for promissory notes or other like evidence of indebtedness. County Commissioners vs. State, 78 O. S. 287.

Resolution as  
to such debts.

SECTION 5658. No indebtedness of a township, school district or county shall be funded, refunded or extended unless such indebtedness is first determined to be an existing, valid and binding obligation of such township, school district or county by a formal resolution of the trustees, board of education or commissioners thereof, respectively. Such resolution shall state the amount of the existing indebtedness to be funded, refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of their maturity, the rate of interest they shall bear and the place of payment of principal and interest.

HISTORY.—R. S. § 2834a; 92 v. 6; 92 v. 33; 93 v. 233; 97 v. 514. See G. C. § 5656.

See opinions of Attorney General No. 1889 (1921), cited under Sec. 7610.

Levy to meet  
payment of  
bonds.

SECTION 5659. For the payment of the bonds issued under the next three preceding sections, the township trustees, board of education or county commissioners shall levy a tax, in addition to the amount otherwise authorized, each year during the period the bonds have to run sufficient in amount to pay the accruing interest and the bonds as they mature.

HISTORY.—R. S. § 2834a; 92 v. 6; 92 v. 33; 93 v. 233; 97 v. 514. See G. C. § 5656.

Taxing districts  
authorized to  
issue bonds  
when 50% of  
tax collections  
is enjoined or  
in litigation.

SECTION 5659-1. All municipal corporations, the board of education of any district and the commissioners of any county, through their proper officers, shall have power to borrow money and to issue bonds in payment therefor, to provide funds, to meet the payment of current expenses and sinking fund indebtedness, when the collection of general taxes aggregating fifty per cent. (50%) or more of the general tax duplicate, for any fiscal year, of their respective taxing districts, has been enjoined by any court or the collection of which is in litigation. The bonds so issued may be made to run for a term not to exceed ten years and shall not bear a greater rate of interest than six per cent. (6%), nor be sold for less than par with accrued interest. All moneys received from the sale of bonds, as herein provided, shall become a part of the general fund of the taxing district wherein bonds are so issued, and shall be used for only such purposes as the enjoined or otherwise litigated collection of taxes were appropriated for.

HISTORY.—106 v. 11, § 1.

Application of  
money derived  
from bond  
issue.

SECTION 5659-2. All tax collections which are paid into the treasury of any taxing district, which have theretofore been enjoined or the collection of which has been in litigation, and for which deficit bonds have been issued, under authority of the preceding section, shall be turned

over to the trustees of the sinking fund of said taxing district, to be applied toward the payment of the principal and interest of the deficit bonds so issued.

HISTORY.—106 v. 11, § 2.

SECTION 710-III. A bank may invest its capital, surplus, undivided profits and deposits in the following securities: \* \* \*

Securities designated in which investment may be made.

(d) Bonds or other interest-bearing obligations of any county, town, township, city, school district, improvement district or sewer district, or other organized or political sub-division in this state. \* \* \*

HISTORY.—108 v. Pt. I, 107.

SECTION 9660. To invest any of its idle funds, or any part thereof, in bonds or interest bearing obligations of the United States, or of the District of Columbia, or of the state of Ohio, or of any county, township, school district, or other political division in the state of Ohio, or of any incorporated city or village, in the state of Ohio; and in such other securities as now are or hereafter may be accepted by the United States to secure government [government] deposits in national banks. But such investments at no time shall amount in the aggregate to more than twenty per cent of the assets of such corporation.

Idle funds of building and loan associations; how invested.

HISTORY.—99 v. 530, § 16. For an analogous section, see R. S. § 3836-3a.

## CHAPTER 15

### LIMITATIONS ON LEVY OF TAXES

#### SECTION

- 5649-1. Tax levies to pay principal and interest on bonds to have preference to the full amount thereof.
- 5649-1a. All bonds heretofore issued and sold at par and accrued interest to be valid and binding obligations.
- 5649-1b. Resolutions, etc., providing for issue of bonds to contain levy for interest and sinking fund purposes.
- 5649-1c. Fiscal officer of political subdivision to certify to tax levying authority amount necessary to pay final judgments.
- 5649-2. Tax levy limitations.
- 5649-3a. When board of education to submit annual budget to county auditor. Limitation on tax levy for school purposes.
- 5649-3b. County budget commission, members of, powers and duties.
- 5649-3c. Examination of budget and estimates; tax rate ascertained.
- 5649-3d. Appropriations to be made at the beginning of each fiscal half-year.
- 5649-3e. Unexpended appropriations or balance to revert to general fund.

#### SECTION

- 5649-4. Tax levies for emergencies outside of limitations.
- 5649-5. Proceedings when maximum rate not sufficient.
- 5649-5a. How such question submitted; notice of election.
- 5649-5b. Maximum tax levy in event of favorable vote on question.
- 5649-6. Aggregate tax limitation in consolidated districts.
- 5649-6a. Tax authorities authorized to remove interest and sinking fund levies from limitation of tax rates on majority vote of electors.
- 5649-6b. On favorable vote necessary levies for interest and sinking fund purposes to be made without reference to tax limitations.
- 5649-6c. Nothing in G. C. 5649-6a to 5649-6d to apply to current levies.
- 5649-6d. Interest and sinking fund receipts on certain bonds excluded from tax limitations.
- 5649-7. When budget commissions of two or more counties to adjust tax rates.

Tax levy for sinking fund and interest.

SECTION 5649-1. In any taxing district, the taxing authority shall, within the limitations and in the manner prescribed by law, levy a tax sufficient to provide for interest and maturity payment purposes for all serial bonds issued by any political subdivision, and for interest and for sinking fund purposes of all bonds heretofore issued by such political subdivision, which tax shall be placed before and in preference to all other items, and for the full amount thereof.

HISTORY.—101 v. 430, § 1; 104 v. 12; 109 v. 346.

The provision of Section 5649-1, General Code, that the taxing authorities of each taxing district of the state shall levy a tax sufficient to provide for sinking fund and interest purposes, requires the county budget commissioner to certify to the county auditor a tax sufficient for such purposes, regardless of other needs of the taxing district. (*Rabe vs. Board of Education*, 88 O. S. 403, approved and followed.) *State ex rel vs. Zangerle*, 94 O. S. 447.

Under the provisions of Section 5649-1, General Code, as amended 104 Ohio laws, page 12, it is the duty of all taxing authorities to levy a tax, within the limitations prescribed by law, sufficient to provide for sinking fund and interest purposes for all bonds issued by any political sub-division of the state, which tax when levied shall have preference to all other levies and for the full amount thereof. *State ex rel vs. Dean, Auditor*, 95 O. S. 108.

Though sinking fund levies of a taxing district are preferred by the provisions of section 5649-1 General Code to levies for current expenses of said taxing district, they are not as a matter of law preferred to the current expense levies of another taxing district including the same territory. *Op. Atty. Gen.* (1918), p. 1101.

See opinions of Attorney General (1919), p. 568, cited under Sec. 7908.



SECTION 5649-1a. All bonds heretofore issued by any political subdivision for a lawful purpose which have been sold for not less than par and accrued interest and the proceeds thereof paid into the treasury, shall be held to be legal, valid and binding obligations of the political subdivision issuing the same.

Former bonds shall be legal.

HISTORY.—104 v. 12.

This section was held to validate all bonds issued prior to February 14, 1914, for a lawful purpose, and which were sold for not less than par and accrued interest. Op. Atty. Gen. (1918), p. 1101.

SECTION 5649-1b. The resolution, ordinance or other measure under which bonds are issued or authorized shall contain a levy of taxes sufficient to pay the interest and principal of the bonds as they mature and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax-levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, including the county budgets; provided, however, that the county commissioners of any county, board of education of any school district, trustees of any township or council or chief legislative body of any municipality or other political subdivision may in any year appropriate for the purpose of paying any part of the annual interest or principal of such bonds of the political subdivision any surplus in the sinking fund or other bond retirement fund of the political subdivision not required for the purpose for which the said sinking or other bond retirement fund was raised and certify such appropriation to the county auditor, and thereupon the tax levy of the subdivision for the current year for the interest and principal of said bonds and the sum submitted by the auditor to the budget commissioners for said purpose shall be reduced by the amount so certified, and the sum appropriated as aforesaid shall not be used or expended for any purpose other than the payment of the interest and principal for which appropriated until and unless said interest and principal be otherwise fully paid or liquidated; provided that no such appropriation shall be made from the sinking fund without the approval of the sinking fund trustees or commissioners. The sum thus included in any budget submitted to the budget commissioners shall not be reduced by said commissioners and shall be given by said auditor and commissioners and other taxing authorities all the precedence and priorities provided by law for interest and sinking fund levies.

Resolution or ordinance shall contain tax levy and included in annual budget.

HISTORY.—104 v. 12, § 3; 109 v. 344.

SECTION 5649-1c. On or before the first Monday in May of each year, the fiscal officer of the municipal corporation or other political subdivision shall certify to the council, county commissioners, board of education or other tax

Certification by fiscal officer of tax necessary to pay judgments.

levying authority of his political subdivision the amount of tax necessary to provide for the payment of final judgments against the political subdivision, except in condemnation of property cases, and said tax levying authority shall place such amount in the annual tax levying ordinance, resolution or other measure for the full amount certified.

HISTORY.—109 v. 345.

Tax levy limitation.

SECTION 5649-2. Except as otherwise provided in section 5649-4 and section 5649-5 of the General Code, the aggregate amount of taxes that may be levied on the taxable property in any county, township, city, village, school district or other taxing district, shall not in any one year exceed ten mills on each dollar of the tax valuation of the taxable property of such county, township, city, village, school district or other taxing district for that year, and such levies in addition thereto for sinking fund and interest purposes as may be necessary to provide for any indebtedness heretofore incurred or any indebtedness that may hereafter be incurred by a vote of the people.

HISTORY.—101 v. 430, § 2; 102 v. 266; 103 v. 552.

Levy for deficiency bonds in 1919 not subject to limitation on tax rate. See 103 v. Pt. I 694.

In view of the legislative policy declared by the enactment of the so-called Smith One Per Cent. law (Sections 5649-2, 5649-5b, General Code), the manifest purpose of which is to restrict the power of levying taxes and thus limit expenditures by administrative officers, statutes purporting to permit departures from that general policy and authorizing exemptions therefrom will be strictly construed. *State ex rel. vs. Zangerle*, 95 O. S. 1.

Sections 5649-2, 5649-5b, General Code, inclusive, limit the rate of taxes that can be levied in any taxing district for any and all purposes. Any statutes existing at the time of the passage of these sections, in direct conflict therewith and not specifically repealed thereby, are repealed by implication.

These sections of the General Code furnish the basis of calculation for the issue of bonds in anticipation of income from taxes levied or to be levied.

Bonds cannot be issued in anticipation of income from taxes levied or to be levied in an amount greater than the income to be appropriated thereby. *Rabe vs. Board of Education*, 88 O. S. 403.

For construction and application of the provisions of the Smith One Per cent. Law as originally enacted by the act of June 2, 1911, see *State ex rel. vs. Sanzenbacher*, 84 O. S. 506.

Limitations of the power to tax becomes unconstitutional where they repeal the obligations of contracts. *State ex rel. vs. Sayre*, 12 O. N. P. (N. S.) 120.

The levy provided for by section 7896-55 General Code is not a part of any of the four principal levies of a school district. It is accordingly not included within the tuition levy, which to the extent of one mill is subject only to the fifteen mill limitation of the Smith one per cent. law, but with other local school levies must be brought within the limitation of three mills provided by section 5649-3a General Code.

The board of education in making up its annual budget must designate the levy under section 7896-55 not as a special item of some other fund, but as a separate levy. The budget commission in acting on the school levies is not at liberty to reduce this levy unless such reduction is compelled by the fact that the levy itself, without consideration of contingent and building fund levies and so much of the tuition fund levy as is in excess of one mill, will exhaust the three mill limitation under section 5649-3a General Code.

or with other levies applicable in the same district will cause the ten mill limitation of section 5649-2, General Code to be exceeded; but if the electors of the district approve additional levies under sections 5649-4 and 5649-5 General Code the levy provided for by section 7896-55 may be included within the levies that may be thus made outside of all limitations. Op. Atty. Gen. (1920), p. 560.

Section 7629 General Code was not repealed by implication by the enactment of sections 5649-2 to 5649-5b General Code, and the board of education of a school district may issue bonds under authority of such section 7629 General Code for the purposes therein set forth, subject to the limitations provided in said section and subject also to the limitations as to tax rates provided by sections 5649-2 to 5649-5b General Code. Op. Atty. Gen. (1915), p. 1640.

SECTION 5649-3a. On or before the first Monday in June, each year, the county commissioners of each county, the council of each municipal corporation, the trustees of each township, each board of education and all other boards or officers authorized by law to levy taxes, within the county, except taxes levied by the state or for state purposes, shall submit or cause to be submitted to the county auditor an annual budget, setting forth in itemized form an estimate stating the amount of money needed for their wants for the incoming year, and for each month thereof. Such annual budgets shall specifically set forth:

When tax levy shall be made.

(1) The amount to be raised for each and every purpose allowed by law for which it is desired to raise money for the incoming year.

Annual budgets, what shall be specifically set forth.

(2) The balance standing to the credit or debit of the several funds at the end of the last fiscal year.

(3) The monthly expenditures from each fund in the twelve months and the monthly expenditures from all funds in the twelve months of the last fiscal year.

(4) The annual expenditures from each fund for each year of the last five fiscal years.

(5) The monthly average of such expenditures from each of the several funds for the last fiscal year, and also the total monthly average of all of them for the last five fiscal years.

(6) The amount of money received from any other source and available for any purpose in each of the last five fiscal years, together with an estimate of the probable amount that may be received during the incoming year from such source or sources.

(7) The amount of the bonded indebtedness, setting out each issue and the purpose for which issued, the date of issue and the date of maturity, the original amount issued and the amount outstanding, the rate of interest, the sum necessary for interest and sinking fund purposes, and the amount required for all interest and sinking fund purposes for the incoming year.

(8) The amount of all other indebtedness incurred, with a statement of the sections under which such indebtedness was incurred, and the amount of such additional taxes as may have been authorized as provided in section 5649-5



or 5649-4 or any other section of the General Code under which taxes have been levied outside of usual tax limitations or by a vote of the people, setting out in detail each item of indebtedness as provided in the next preceding paragraph and giving the details as to dates of such levies, their rates and the periods for which they run.

(9) Such other facts and information as the tax commission of Ohio or the budget commissioners may require.

Maximum tax levies; county, township, municipality and school district.

The aggregate of all taxes that may be levied by a county, for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills. The aggregate of all taxes that may be levied by a municipal corporation on the taxable property in the corporation, for corporation purposes, on the tax list, shall not exceed in any one year five mills. The aggregate of all taxes that may be levied by a township, for township purposes, on the taxable property in the township on the tax list, shall not exceed in any one year one and five-tenths mills. The local tax levy for school purposes shall not exceed in any one year three mills on the dollar of valuation of taxable property in any school district. Such limits for county, township, municipal and school levies shall be exclusive of any special levy provided for by a vote of the electors, any levy excepted from the limitation provided for in section 5649-2 of the General Code or authorized by said section or by any other provision of law to be made in addition to the limitation provided for in said section; nor shall such limits include special assessments, levies for road taxes that may be worked out by the tax payers, and levies and assessments in special districts created for road or ditch improvements, over which the budget commissioners shall have no control.

When budget shall be made.

Such budget shall be made up annually at the time or times now fixed by law when such boards or officers are required to determine the amount in money to be raised or the rate of taxes to be levied in their respective taxing districts.

Blank forms furnished by county auditor.

The county auditor shall provide and furnish such boards and officers blank forms and instructions for making up such budgets.

HISTORY.—102 v. 266; 108 v. Pt. II 1303 (1304); 109 v. 146.

Under the provisions of Section 5649-3a, General Code, the budget commissioners, in the adjustment of the various amounts of taxes to be raised in a taxing district and in reducing the estimates contained in the budgets, are called upon to exercise their official judgment and discretion. In the absence of fraud, bad faith, or abuse of discretion it is not within the power of the court to interfere, and an action in mandamus will not lie to control such discretion or correct an error of judgment. *State ex rel vs. Patterson*, 93 O. S. 25.

Held, that the budget commission in enforcing the ten mill limitation must first bring down all estimates separately to such point as to conform to the five, three and two-mill limitation of section 5549-3a, G. C., and then, exercising reasonable discretion, the budget commission should further reduce the budgets of such taxing districts as require reduction, having regard to the proportions indicated by section 5649-3a G. C. *Op. Atty. Gen.* (1918), p. 1101.

The first interest and sinking fund levy on the account of bonds issued under section 7630-1 G. C. should be certified to the county auditor by the board of education, though the election authorizing the issuance of such bonds and the resolution providing therefor are not held and passed, respectively, until shortly after the first Monday in June. Such levy is not subject to the control of the budget commission. Op. Atty. Gen. (1919), p. 832.

The one mill levy for tuition purposes authorized by the amendment to section 7587 G. C. is in addition to the three mill limitation provided for in section 5649-3a G. C. Op. Atty. Gen. (1920), p. 338.

The levy provided for by section 7896-55 general code is not a part of any of the four principal levies of a school district. It is accordingly not included within the tuition levy, which to extent of one mill is subject only to the fifteen mill limitation of the Smith one per cent law, but with other local levies such levy must be brought within the limitation of three mills, provided by section 5649-3a. Op. Atty. Gen. (1920), p. 560.

See opinions of Attorney General as follows:

No. 2082 (1921), cited under Sec. 5649-6a.

No. 2291 (1921), cited under Sec. 7625.

(1916), p. 1207, cited under Sec. 4001.

(1918), p. 568, cited under Sec. 7908.

SECTION 5649-3b. There is hereby created in each county a board for the annual adjustment of the rates of taxation and fixing the amount of taxes to be levied therein, to be known as the budget commissioners. The county auditor, the county treasurer and the prosecuting attorney shall constitute such board. The budget commissioners shall meet at the auditor's office in each county on the first Monday in August annually, and shall complete their work on or before the third Monday in that month, unless for good cause the tax commission of Ohio shall extend the time for completing the work. Each member shall be sworn faithfully and impartially to perform the duties imposed upon him by law. Two members shall constitute a quorum. The auditor shall be the secretary of the board and shall keep a full and accurate record of all proceedings. The auditor shall appoint such messengers and clerks as the board deems necessary, who shall receive not to exceed three dollars per day for their services for the time actually employed, which shall be paid out of the county treasury. The budget commissioners shall be allowed their actual and necessary expenses. Such expenses shall be itemized and sworn to by the person who incurred them and paid out of the county treasury when approved by the board. For the purpose of adjusting the rates of taxation and fixing the amount of taxes to be levied each year the county auditor and the budget commissioners shall be governed by the amount of the taxable property as shown on the auditor's tax list for the current year; provided, that if the auditor's tax list has not been completed, the county auditor shall estimate as nearly as practicable the amount of the taxable property for such year and such officers shall be governed by such estimate.

County budget  
commission.  
members of,  
powers and  
duties.

HISTORY.—102 v. 266; 103 v. 552; 104 v. 237; 106 v. 180.

The state has authority to appoint administrative agencies not only to levy but to supervise and adjust the levies between its tax-

ing units; and sections 5649-3b and 5649-3c, General Code, creating the budget commission and defining its duties, are not a delegation of legislative power. *State ex rel vs. Cooper*, 97 O. S. 86.

The duties of the budget commission prescribed by section 5649-3b, G. C., involve the exercise of judgment and discretion, and consequently a deputy cannot exercise the same on behalf of his principal. *Op. Atty. Gen.*, (1914), p. 705.

See opinions of Attorney General (1918), p. 568, cited under Sec. 7908.

Examination of  
budget and  
estimates;  
when certified.

SECTION 5649-3c. The auditor shall lay before the budget commissioners the annual budget submitted to him by the boards and officers named in section 5649-3a of this act, together with an estimate to be prepared by the auditor of the amount of money to be raised for state purposes in each taxing district in the county, and such other information as the budget commissioners may request, or the tax commission of Ohio may prescribe. The budget commissioners shall examine such budgets and estimates prepared by the county auditor, and ascertain the total amount proposed to be raised in each taxing district for state, county, township, city, village, school district, or other taxing district purposes. If the budget commissioners find that the total amount of taxes to be raised therein does not exceed the amount authorized to be raised in any township, city, village, school district, or other taxing district in the county, the fact shall be certified to the county auditor. If such total is found to exceed such authorized amount in any township, city, village, school district, or other taxing district in the county, the budget commissioners shall adjust the various amounts to be raised so that the total amount thereof shall not exceed in any taxing district the sum authorized to be levied therein. In making such adjustment the budget commissioners may revise and change the annual estimates contained in such budgets, and may reduce any or all the items in any such budget, but shall not increase the total of any such budget, or any item therein. The budget commissioners shall reduce the estimates contained in any or all such budgets by such amount or amounts as will bring the total for each township, city, village, school district, or other taxing district, within the limits provided by law, but if the aggregate of the items of any school district budget for purposes for which taxes subject to the limitations imposed by section 5649-3a of the General Code are to be levied would require a total levy, subject to such limitation, of two mills in such districts in which all the limitations imposed by such section are operative, or of two and two-tenths mills in such districts in any part of which the township limitation therein imposed is not operative, the budget commissioners shall not reduce such items of such school district budget below an amount which would be produced by a levy in the whole district at the greater of the two rates mentioned in this section.

Adjustment of  
budget.

When items in  
school budget  
shall not be  
reduced.

Tax rate  
ascertained.

When the budget commissioners have completed their work they shall certify their action to the county auditor, who shall ascertain the rate of taxes necessary to be levied



upon the taxable property therein of such county, and of each township, city, village, school district, or other taxing district, returned on the grand duplicate, and place it on the tax list of the county.

HISTORY.—102 v. 266; 103 v. Pt. II 1303 (1305).

For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

The budget commissioners of a county cannot reduce, increase, or change the sum levied for state purposes. *State ex rel vs. Edmondson*, 89 O. S. 93.

See opinions of Attorney General (1918), p. 568, cited under Sec. 7908.

SECTION 5649-3d. At the beginning of each fiscal half year the various boards mentioned in section 5649-3a of this act shall make appropriations for each of the several objects for which money has to be provided, from the moneys known to be in the treasury from the collection of taxes and all other sources of revenue, and all expenditures within the following six months shall be made from and within such appropriations and balances thereof, but no appropriation shall be made for any purpose not set forth in the annual budget nor for a greater amount for such purpose than the total amount fixed by the budget commissioners, exclusive of receipts and balances.

Appropriations each fiscal half year.

HISTORY.—102 v. 266.

See opinions of Attorney General (1918), p. 711, cited under Sec. 7908.

(1916), p. 1207, cited under Sec. 4001.

SECTION 5649-3e. Unexpended appropriations or balances of appropriations remaining over at the end of the year, and the balances remaining over at any time after a fixed charge shall have been terminated by reason of the object of the appropriation having been satisfied or abandoned, shall revert to the general fund, and shall then be subject to other authorized uses, as such board or officers may determine.

Balances unexpended.

HISTORY.—102 v. 266.

SECTION 5649-4. For the emergencies mentioned in sections forty-four hundred and fifty, forty-four hundred and fifty-one, fifty-six hundred and twenty-nine, and 7630-1 of the General Code, and for local school purposes authorized by a vote of the electors under the provisions of sections 5649-5 and 5649-5a of the General Code, to the extent of three mills for such school purposes, the taxing authorities of any district may levy a tax sufficient to provide therefor irrespective of any of the limitations of this chapter.

Tax levy for emergency irrespective of limitations.

HISTORY.—101 v. 430, § 4; 103 v. 527; 108 v. Pt. II 1303 (1306).

Under section 7630-1, G. C., mere equipment or furnishings for a school house, made necessary by the order of the department of inspection of public buildings in the Industrial Commission, can not be made the basis of the issuance of bonds the sinking fund levies on account of which may be exempted from all limitations under section 5649-4; but installation of such equipment as a heating system, a sanitary system, the removal of floor registers, new

hardware on doors, and provision for additional means of egress, involving as they do fundamental alterations of the building itself, are not to be classed as mere furnishings but as repairs and rebuilding within the meaning of said section 7630-1, G. C. Op. Atty. Gen. (1920), p. 825.

See opinions of Attorney General (1914), p. 548, cited under Sec. 1032; No. 1889 (1921), cited under Sec. 7610.

See opinions of Attorney General (1918), p. 568, cited under Sec. 7908.

Proceedings  
when maximum  
rate insuffi-  
cient.

SECTION 5649-5. The county commissioners of any county, the council of any municipal corporation, the trustee of any township, or any board of education may, at any time, by a majority vote of all the members elected or appointed thereto, declare by resolution that the amount of taxes that may be raised by the levy of taxes at the maximum rate authorized by sections 5649-2 and 5649-3 of the General Code as herein enacted within its taxing district, will be insufficient and that it is expedient to levy taxes at a rate, in excess of such rate and cause a copy of such resolution to be certified to the deputy state supervisors of the proper county. Such resolution shall specify the amount of such proposed increase of rate above the maximum rate of taxation and the number of years not exceeding five during which such increased rate may be continued to be levied.

HISTORY.—101 v. 430, § 5; 102 v. 266.

The provisions of Section 5649-5, General Code, which authorize "any board of education \* \* \* at any time \* \* \* to declare by resolution that the amount of taxes that may be raised by the levy of taxes at the maximum rate authorized by Sections 5649-2 and 5649-3 of the General Code \* \* \* will be insufficient and that it is expedient to levy a tax at a rate, in excess of such rate," and the provision of that and the succeeding section for the submission of such proposition to the electors of the district, authorize such board of education to submit separate propositions for the increase of such rate in separate years; and where such propositions cover the same years in part, and it is the manifest intention of such board and the electors voting upon such proposition that such levies shall be cumulative, a board of education is authorized by Section 5649-2, which includes Sections 5649-4 and 5649-5, General Code, by reference, to include in its estimate for submission to the budget commission all such special levies voted by the electors.

Special levies voted by the electors under the provisions of Section 5649-5 and 5649-5a, General Code, are by the provisions of Section 5649-3a, General Code, exempt from control of the budget commissioners.

Special levies to the extent of three mills for local school purposes authorized by a vote of the electors since the amendment of Section 5649-4 of February 4, 1920, (108 O. L. Pt. 2, 1306), are outside of all limitations of Title 1, Chapter 12, Part Second of the General Code of Ohio. Faust, Auditor, vs. State ex rel 103, O. S., 271 (Decided July 12, 1921.)

If a school district votes an additional levy under sections 5649-5 and 5649-5a, G. C., with a view to obtaining the benefit of such action accruing by virtue of amended section 5649-4, G. C., the effect of such action will be to substitute the authority thus conferred upon the board of education for the authority existing by virtue of a previous vote under sections 5649-4 and 5649-5, G. C. Op Atty. Gen. (1920), p. 395.

In a school district where the question of an additional levy under the provision of sections 5649-5 and 5649-5a, G. C., was submitted to the electors at a special election held on August 10th, 1920, and the authorization of such additional levy failed to receive

a majority of those voting thereon, such question may be again submitted at the general election in 1920, in the manner provided in section 5649-5a, G. C., and if the question carries by a majority vote such school district is entitled to participate in the reserve fund to be disbursed by the state superintendent of public instruction for the school year 1920-21. Op. Atty. Gen. (1920), p. 906.

Held that a school district maintaining a second and third grade high school, had not reached the maximum levy permitted by law, as provided in section 7748, G. C., where the electors in such school district, at a special election refused to authorize the additional levy allowed under the provisions of section 5649-5 and section 5649-5a, G. C., submitted at such election under authority of section three of House Bill 615, (108 O. L. 1303), and the board of education is not relieved of paying the tuition of graduates eligible to high school who are residents in such school district. Op. Atty. Gen. (1920), p. 920.

Where the electors of a school district voted upon the question of a levy for taxes, under the provisions of sections 5649-5 and 5649-5a, G. C., the amount to be three mills for two years, and a mistake was made in printing the ballots providing for a levy of three mills for five years, the proceeding is not invalid and the board of education is authorized to levy three mills for school purposes during a period of two years, the period provided in the resolution of the board of education. Op. Atty. Gen. (1920), p. 1274.

Under favor of section 5649-5 et seq., G. C., a taxing district within which the five and ten-mill limitations of sections 5649-3a and 5649-2, G. C., respectively, are insufficient to provide necessary revenue, may submit the question of extra tax levies to a vote of the people, but the approval of the electors given to the taxing authorities of one or more taxing districts levying within the same territory can not authorize a combined maximum rate in excess of fifteen mills; so that if the number of mills approved by the people, together with other levies, exceeds fifteen mills, the budget commission must reduce the special levy with other levies, so that the fifteen-mill limitation will not be exceeded; and so that further, if the electors of a given territory approve levies by different authorities within that territory which in combination will cause the fifteen-mill limitation to be exceeded, the margin within the fifteen-mill limitation must be apportioned by the budget commission between the two taxing districts which have been authorized to make additional levies. Op. Atty. Gen., (1918), p. 1101.

The effect of a vote under section 5649-5a, G. C., is merely to authorize the making of additional levies subject to the fifteen-mill limitation imposed by section 5649-5b, G. C., for and during the period of time covered by such vote. Such vote is not in and of itself effective as a levy, and if the levying authorities omit to make the levy in any year within such period, no authority is thereby granted to make such levy in any year after the expiration of the period. This is true even though the omission to make the levy is due to the breach of mere ministerial duty, and no steps had been taken in time to compel the performance of such duty. Op. Atty. Gen., (1920), p. 349.

SECTION 5649-5a. Such proposition shall be submitted to the electors of such taxing district at the November election that occurs more than twenty days after the adoption of such resolution. The deputy state supervisors shall prepare the ballots and make the necessary arrangements for the submission of such question to the electors of such taxing district, and the election shall be conducted, canvassed and certified in like manner, except as otherwise provided by law, as regular elections in such taxing district for the election of officers thereof. Twenty days' notice of the election shall be given in one or more newspapers printed in the taxing

Vote.

Notice.



district once a week for four consecutive weeks prior thereto, stating the amount of the additional rate to be levied, the purpose for which it is to be levied, and the number of years during which such increased rate may be continued to be levied, and the time and place of holding the election. If no newspaper is printed therein, the notice shall be posted in a conspicuous place and published once a week for four consecutive weeks in a newspaper of general circulation in such taxing district.

Ballot.

The form of the ballots cast at such election shall be:

"For an additional levy of taxes for the purpose of .....not exceeding.....mills, for not to exceed.....years, Yes."

"For an additional levy of taxes for the purpose of .....not exceeding.....mills, for not to exceed.....years, No."

HISTORY.—102 v. 266.

Result.

SECTION 5649-5b. If a majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district at a rate not to exceed such increased rate for and during the period provided for in such resolution, but in no case shall the combined maximum rate for all taxes levied in any year in any county, city, village, school district, or other taxing district, under the provisions of this and the two preceding sections and sections 5649-1, 5649-2 and 5649-3 of the General Code as herein enacted, exceed fifteen mills.

Maximum levy  
fifteen mills.

HISTORY.—102 v. 266; 103 v. 57.

Where a board of education submits to the electors of the district a proposition for extra taxes in the years 1921, 1922 and 1923 under favor of House Bill 34 (109, O. L., 307), and the proposition so submitted fails to receive the affirmative votes of sixty per cent. of the electors voting thereon, but does receive a majority of the votes of such electors, the board of education is not authorized to make any levy outside of the fifteen-mill limitation provided for by section 5649-5b of the General Code. Op. Atty. Gen. No. 2625, Nov. 26, 1921.

A levy for school purposes authorized by the electors under sections 5649-5 and 5649-5a, G. C., prior to 1920 may not be made to any extent outside of the limitations of section 5649-5b, G. C. Op. Atty. Gen. (1920), p. 338.

See opinions of Attorney General (1918), p. 568, cited under Sec. 7908.

Consolidated  
districts.

SECTION 5649-6. Whenever two or more taxing districts are consolidated by annexation or otherwise, the aggregate amount of taxes authorized under section two of this act, for such consolidated district shall not exceed the sum of the aggregate amounts which would have been authorized for all of said taxing districts separately.

HISTORY.—101 v. 430, § 6.

SECTION 5649-6a. The commissioners of any county, the trustees of any township, the council or other legislative body of any municipal corporation, or the board of education of any school district having a bonded indebtedness on January 20, 1920, or having authority by a vote of the electors at an election held prior to said date, to issue such bonds, or having provided for the issuance of such bonds without a vote of the electors by ordinance or resolution adopted on or before said date, whether the effectiveness thereof was postponed until after said date by laws or charter provisions requiring publication or subjecting such ordinance or resolution to a referendum, or not, may, at any regular or primary election held in the year 1920 or in any year thereafter during the life of any such bonds submit to the electors of such county, township, municipal corporation, or school district, in the manner provided by sections 5649-5 and 5649-5a of the General Code the proposition of exempting from the limitations of sections 5649-2, 5649-3a and 5649-5b of the General Code all subsequent levies for interest and sinking fund purposes on account of such bonds. In the resolution providing for such submission, the rate of taxes that would be required for such purposes in the next succeeding year on the basis of the duplicate made up in the year in which the resolution is adopted shall be set forth, together with the number of years during which the exemption would apply. The form of ballots cast at such election shall be:

Taxing authorities permitted to remove interest and sinking fund levies from limitations on tax rates on majority vote of electors.

Resolution; form of ballot.

"For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "Yes."

"For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "No."

HISTORY.—108 v. Pt. II 1199, § 1.

No authority is conferred on a board of education by sections 5649-6a and 5649-6b of the General Code to submit to the electors of their school district the question of exempting from all tax limitations interest and sinking fund levies for any specific bonded indebtedness of the district. The question submitted must be that of exempting from all tax limitations the necessary interest and sinking fund levies on account of all outstanding bonded indebtedness of the district, which term includes not only bonds issued prior to January 20, 1920, but also bonds authorized to be issued prior to that date by a vote of the electors or by a resolution of the board of education which have not actually been issued until after that date.

After the approval of the electors of a school district is secured in the manner provided by sections 5649-6a and 5649-6b, a board of education of a school district may levy taxes irrespective of the limitations of sections 5649-2, 5649-3a and 5649-5b to pay interest upon and create a sinking fund for the redemption of the bonded indebtedness of the district, including not only bonds issued and outstanding January 20, 1920, but also bonds not issued but authorized to be issued prior to that date either by a vote of the electors or by a resolution of the board, even though in the resolution of the board of education submitting such tax exemption question to the electors no specific mention was made of such authorized but not yet issued bonds. Op. Atty. Gen. No. 2082, May 16, 1921.

Rate may run  
during life of  
bonds.

SECTION 5649-6b. If the majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district for such purposes during the remainder of the life of such bonds at such rate, annually, as may be necessary to pay the interest on such bonds and to provide a sinking fund for their retirement at maturity, irrespective of any of the limitations prescribed by the sections of the General Code mentioned in section 1 [G. C. § 5649-6a] of this act.

HISTORY.—108 v. Pt. II 1199 (1200), § 2.

Not applicable  
to current  
levies.

SECTION 5649-6c. Nothing in this act shall apply to current levies in anticipation of which bonds have been issued; and such bonds shall not be considered as a part of the bonded indebtedness of any political sub-division for the purposes of this act. [9 C. §§ 5649-6a to 5649-6d.]

HISTORY.—108 v. Pt. II 1199 (1200), § 3.

What interest  
and sinking  
fund levies  
excluded.

SECTION 5649-6d. All interest and sinking fund levies on account of bonds issued by any municipal corporation under authority of H. B. No. 712 of the 83rd General Assembly passed January 22, 1920, entitled "to authorize the taxing authorities of municipal corporations to fund deficiencies in operating revenues for the year 1920, issue bonds and levy taxes for such purposes" shall be excluded from the operation of any and all limitations on tax rates imposed by any law now in force, anything in the provisions of said H. B. No. 712 or in such tax limitation laws to the contrary notwithstanding.

HISTORY.—108 v. Pt. II 1199 (1200), § 4.

Joint session  
of commis-  
sions to ad-  
just tax  
rates; powers.

SECTION 5649-7. Whenever a taxing district is located in two or more counties, the budget commission of the counties in which such district is located shall meet in joint session at the call of the chairman of the commission of the county wherein the greatest amount in value of taxable property in such taxing district is located, and adjust the rates of taxation for the purpose of such district so as to enforce the limitation of the preceding section and to produce uniform rates throughout the districts. Provided, however, that the levies for such taxing district purposes shall not be reduced by such joint budget commission below what would be required to enforce such limitation in such part of such district in which the least reduction of such levies is necessary to enforce such limitation; and such levies so fixed shall be applied uniformly throughout such district, anything to the contrary in the provisions of the preceding sections of this chapter notwithstanding.

HISTORY.—108 v. Pt. II 1226.



## CHAPTER 16

### TRANSFER OF FUNDS, LIMITATION ON CONTRACTS AND INSPECTION OF ACCOUNTS

#### SECTION

2296. How board of education may transfer funds.  
2297. Resolution and petition for transfer.  
2298. Notice of petition.  
2299. Hearing on petition and objections.  
2300. Transfer upon finding of court.  
2301. Finding of court to be entered on record of board of education.  
2302. Proceedings on appeal or error to finding of court.  
5660. Board of education not to enter into contract unless money certified to be in fund.

#### SECTION

5661. Provisions not to apply to certain contracts.  
274. Bureau of inspection of public offices; its duties and powers.  
283. Removal from office for failure to keep proper accounts.  
284. Biennial examination of school district offices to be made.  
286. What report of examination shall set forth and where same is to be filed. Collection of amounts found due by bureau.

SECTION 2296. The county commissioners, township trustees, the board of education of a school district, or the council, or other board having the legislative power of a municipality, may transfer public funds, except the proceeds or balances of special levies, loans or bond issues, under their supervision, from one fund to another, or to a new fund created under their respective supervision, in the manner hereafter provided, which shall be in addition to all other procedure now provided by law.

Funds may be transferred by whom.

HISTORY.—R. S. §§ 22b-2, 22b-3; 95 v. 371, §§ 1, 2; 103 v. 521 (522).

This section authorizes only the transfer of moneys from one fund to another, both of which are under the control of the same board. *Infirmiry Directors vs. Commissioners*, 6 O. N. P. (N. S.), 347.

This and subsequent sections relating to transfer of funds were considered and applied in the case of *State ex rel vs. Sayre*, 12 O. N. P. (N. S.), 337.

See opinions of Attorney General No. 2220 (1921), cited under Sec. 7896-55.

Held, that the common pleas court has power, under sections 2296 et seq., G. C., to permit a transfer of money from the tuition fund to another fund of the school district, but that in view of the trust nature of the tuition fund such action on the part of the court would be a rare possibility. *Op. Atty. Gen.* (1912), p. 1106.

If the board of education of a school district finds that there is a surplus in its tuition fund, resulting from the local tax levy for said fund, which will not be needed for any of the purposes of said fund, and that it is necessary to transfer said surplus to its building fund to be used in the construction of a school building which the board of education finds necessary for proper accommodation of the pupils of its district, such boards may upon the order of the common pleas court, on an application duly made in compliance with the requirements of section 2296, et seq., G. C., transfer said surplus from the said tuition fund to the building fund for the purpose named. *Op. Atty. Gen.* (1915), p. 562.

Authority to transfer funds is limited to funds represented by actual cash in the treasury to the credit of proper funds from which the transfer is to be made; and money belonging in one fund of a school district may not be transferred to cover overdrafts in another fund.

As to actual cash balances, however, there may be a transfer under sections 2296 et seq., G. C., from a sinking fund of a school district to another fund, when the school district has no outstanding bonds. Op. Atty. Gen. (1918), p. 879.

Resolution  
and petition.

SECTION 2297. A resolution of such officers or board shall be duly passed by a majority of all the members thereof declaring the necessity therefor, and such officers or board shall file a petition in the court of common pleas of the county in which the funds are held. The petition shall set forth the name and amount of the fund, the fund or funds to which it is desired to be transferred, a copy of such resolution with a full statement of the proceedings pertaining to its passage, and the reason or necessity for the transfer.

HISTORY.—R. S. § 22b-3; 95 v. 371, § 2.

Notice of the  
petition.

SECTION 2298. The petitioner shall give notice of the filing, objects and prayer of the petition, and of the time when it will be for hearing. The notice shall be given by one publication in two newspapers of opposite politics, having a general circulation in the territory to be affected by such transfer of funds, preference being given to newspapers published within the territory. If there are no such newspapers, the notice shall be posted in ten most conspicuous places within the territory for the period of four weeks.

HISTORY.—R. S. § 22b-3; 95 v. 371, § 2.

Hearings and  
objections.

SECTION 2299. The petition may be heard at the time stated in the notice, or as soon thereafter as convenient for the court, but such cause shall be heard, upon request of the petitioners in preference to all other cases on the docket. Any person or persons, objecting to the prayer of such petition, shall file their objections in such cause on or before the time fixed in the notice for hearing, and they shall be entitled to be heard.

HISTORY.—R. S. § 22b-3; 95 v. 371, § 2.

Transfer  
upon finding  
of court.

SECTION 2300. If, upon the hearing the court finds that the notice has been given as herein required, that the petition states sufficient facts, that there are good reasons, or that a necessity exists for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer. The court may make an order for the reimbursement, in whole or in part, of the fund from which such transfer is made.

HISTORY.—R. S. § 22b-3; 95 v. 371, § 2; 103 v. 521 (523).

Findings to  
be entered in  
records.

SECTION 2301. A copy of the findings, orders and judgments of the court, shall be certified by the clerk and entered on the records of the petitioning officers or board, and thereupon the petitioners may make the transfer of funds as directed therein. All costs of such proceeding shall be paid by the petitioners, except in case objections are

filed, the court may order such objectors to pay all or a portion thereof as is just and equitable.

HISTORY.—R. S. § 22b-3; 95 v. 371, § 2.

SECTION 2302. The petitioners or any person or persons who filed objections to the petition, may appeal such cause to the circuit court of the county, and the proceedings in appeal shall be the same as provided for appeals from the common pleas to the circuit court in other cases, and such cause may be reviewed on error in the supreme court. When the cause is appealed the circuit court shall have the same power and make the same orders, and all proceedings therein shall be had as herein provided for in the court of common pleas, except the question of costs shall be within the discretion of such court.

Appeal and error.

HISTORY.—R. S. § 22b-3; 95 v. 371, § 2.

SECTION 5660. The commissioners of a county, the trustees of a township and the board of education of a school district, shall not enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the appropriation or expenditure of money, unless the auditor or clerk thereof, respectively, first certifies that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose; money to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purpose of this section, be deemed in the treasury and in the appropriate fund. Such certificate shall be filed and forthwith recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, is fully discharged from the contract, agreement or obligation, or as long as the order or resolution is in force.

Certificate, what to specify.

Filing and recording.

HISTORY.—R. S. § 2834b; 93 v. 218; 92 v. 341; 99 v. 520; 101 v. 37. Provisions of this section do not apply to certain appointments and employment, see G. C. § 2413.

For a section limiting the operation of this section, see G. C. § 7201 (108 v. Pt. I 505).

Failure of the clerk of the board of education to first certify that the money used to meet the obligations sought under a contract for the construction of a school house, is in the treasury to the credit of the fund from which it is to be drawn, or that the same has been levied and is in process of collection, and has not been appropriated for any other purpose, renders the contract void. *McAlexander vs. Haviland School District*, 7 O. N. P. (N. S.) 590.

Where no certificate of the clerk of a board of education that a fund requisite for the payment of attorney fees were in the treasury and unappropriated, was filed prior to the adoption of the resolution by the board of education employing said attorneys and providing for the payment of their fees, such resolution is without effect and an injunction will lie against the payment of such attorney fees. *Caldwell vs. Marvin et al*, 8 O. N. P. (N. S.), 387.

The members of a board of education are not personally liable on a contract made by them without an appropriation having first been made therefor as required by this section. *Dayton vs. Thomas*, 20 O. N. P. (N. S.), 539.



Under the provisions of Section 5660, General Code, when money for a public building is to be derived from the sale of lawfully authorized bonds, a contract for such improvement, or any part thereof, is void unless the auditor or clerk of the board first certifies that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn.

Where there is only one bond issue authorized, but several separate contracts are entered into with separate contractors, the auditor or clerk must file a separate certificate for each of such contracts.

The restrictive statutes of the state are enacted for the general good, and for the protection not only of the contractor but also of the taxpayer, and their provisions will be strictly adhered to, and it devolves upon those who deal with public officials to see for themselves that the statutes have been complied with. *Knowlton & Breinig vs. the Board of Education*. 13 App. 30.

By reason of the provision of 5660, General Code, the board of education of a school district can not enter into a \$100,000.00 contract for the construction of a school building without a certificate that the full amount of the contract price is in the treasury. The board, however, may let the contract in distinct sections for less amount of money, and issue bonds for each such contract after completion of former section. *Op. Atty. Gen.* (1911), p. 1013.

By reason of the provisions of this section and of section 5661, G. C., the board of education of a school district does not have authority under the provisions of sections 5656 and 5658, G. C., to fund indebtedness consisting of unpaid bills for contingent expenses. *Op. Atty. Gen.* (1915), p. 477.

Where the board of education of a school district at the time of letting a contract for the construction and equipment of a school building, has sufficient funds available for such purposes as evidenced by the certificate filed with said board by its clerk in compliance with the requirement with section 5660, G. C., but subsequent to the time said obligations are incurred, the bank located in said district and duly designated by said board of education as the depository for the school funds is closed and a receiver therefore appointed, so that said board of education is unable to draw on the funds deposited in said bank to pay said obligations as the same become due, said board of education, by complying with the requirement of section 5658, G. C., that is by first determining by formal resolution that the amounts due according to the terms of the contract are existing, valid and binding obligations of the said school district, may borrow money for the purpose of funding said obligations under the authority of section 5656 G. C. *Op. Atty. Gen.* (1916), p. 683.

Where in an action between the board of education of a school district within the county school district and the county board of education, the prosecuting attorney of the county declines to represent said county board of education, said county board may, upon the filing with it of a certificate of available money in said contingent fund for said purpose, employ counsel to represent it in said case, and out of said fund pay for the services rendered. *Op. Atty. Gen.* (1916), p. 915.

The certificate required by section 5660 G. C., may issue as soon as such levies have been placed on the duplicate and are in process of collection. Such levies can not be regarded as placed on the duplicate and in process of collection until the duplicate of the books containing the tax list has been made up by the county auditor and delivered to the county treasurer. *Op. Atty. Gen.* (1916), p. 1192.

In cases in which bonds have been sold and the proceeds placed in a special fund to be used for a specific work, and a contract is entered into for the construction of said work, the provision of section 5660, G. C., that a certificate must first be made by the proper officer to the effect that the money is in the treasury to the credit

of said fund do not apply. 81 O. S. 66; 74 O. S. 185; 59 O. S. 446; 20 C. C. (N. S.) 47; however, *Village vs. Diekmeier*, 79 O. S. 323 seems to hold otherwise. Op. Atty. Gen. (1917), p. 885.

A contract cannot be awarded for the construction of a school building where the total amount of the lowest bid is in excess of the amount of money in the treasury appropriated for that purpose. Op. Atty. Gen. (1917), p. 692.

Obligations incurred in violations of the provisions of section 5660 G. C., can not be funded under section 5656 G. C. Op. Atty. Gen. (1917), p. 540.

Boards of education are without authority to accept commercial instruments known as "trade acceptances" in payment for goods purchased, such action being contrary to the provisions of Sections 5660 and 5661, General Code, and beyond the power of such officers. Op. Atty. Gen. (1920), p. 666.

SECTION 5661. All contracts, agreements or obligations, and orders or resolutions entered into or passed contrary to the provisions of the next preceding section, shall be void, but such section shall not apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers, and other school employees of boards of education.

Exceptions  
thereof.

HISTORY.—R. S. § 2834b; 93 v. 218; 92 v. 341; 99 v. 520.  
See G. C. § 5660.

See note to G. C., Sec. 5600, citing Op. Atty. Gen. 1920, p. 666.

In the employment of teachers the board of education is not limited by amount of revenue which may be certainly anticipated, and may therefore adopt a salary budget dependent for success upon the approval of the electors of a special levy. Op. Atty. Gen. 1920, p. 646.

SECTION 274. There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the state of Ohio. Said bureau shall have the power to examine the accounts of every private institution, association, board or corporation receiving public money for its use and purpose, and may require of them annual reports in such form as it may prescribe. The expense of such examination shall be borne by the taxing district providing such public money. By virtue of his office the auditor of state shall be chief inspector and supervisor of public offices, and as such appoint not exceeding two deputy inspectors and supervisors, and a clerk. No more than one deputy inspector and supervisor shall belong to the same political party.

Bureau of  
inspection of  
public offices;  
powers and  
duties.

HISTORY.—R. S. § 181a-1; 95 v. 511, § 1; 101 v. 382; 106 v. 26; 103 v. 246. In effect September 1, 1915, as amended in 106 v. 26.

All public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowl-

edge of that fact. Said trust fund can be disbursed only by clear authority of law.

Sections 274, 284 and 286, etc., General Code, creating a bureau of inspection and supervision of public officers, defining its powers and providing for the short form of pleading, are constitutional statutes.

These statutes are comprehensive enough to warrant action against either public officers, former public officers, or private persons. *State ex rel Maharry*, 97 O. S. 272; *State ex rel vs. Shumate*, 72 O. S. 487.

Penalty for refusal to comply with instructions.

SECTION 283. A public officer or employe who refuses or neglects to keep the accounts of his office in the form prescribed, or make the reports required by the bureau of inspection and supervision, shall be removed from office on hearing before the proper authority.

HISTORY.—R. S. § 181a-6; 95 v. 513; 97 v. 273; § 6.

Biennial and annual examinations.

SECTION 284. The bureau of inspection and supervision of public offices, shall examine each public office. Such examination of township, village and school district offices shall be made at least once in every two years and all other examinations shall be made at least once a year, except that the offices of justices of the peace shall be examined at such times as the bureau shall determine. On examination, inquiry shall be made into the methods, accuracy and legality of the accounts, records, files and reports of the office, whether the laws, ordinances and orders pertaining to the office have been observed, and whether the requirements of the bureau have been complied with.

HISTORY.—R. S. § 181a-8; 95 v. 514; 97 v. 273, § 8; 101 v. 382; 103 v. 506 (507).

What report of examination shall set forth; where report filed.

SECTION 286. The report of the examination shall set forth, in such detail as may be deemed proper by the bureau, the result of the examination with respect to each and every matter and thing inquired into and shall be made and signed by the state examiner in charge of the examination or by a deputy inspector, and shall be filed in the office of the bureau of inspection and supervision of public offices and certified copies thereof filed as follows: one in the office of the auditing department of the taxing district reported upon, and one in the office of the attorney general, prosecuting attorney, city solicitor, or mayor of a village, as hereinafter provided. If the report relates to the expenditure of public money from the state treasury or to the disposition of property belonging to the state, the certified copy thereof hereinbefore provided for shall be filed with the attorney general; if it relates to the expenditure of public money belonging to the treasury of a city or city school district or to the disposition of public property belonging to such city or city school district, the certified copy thereof shall be filed with the city solicitor of such city; if the report relates to the expenditure of public money belonging to the treasury of a village or the disposition of public property belonging to such village, the certified copy thereof shall be filed with the mayor of such village; if the report relates to the expenditure of

Where certified copies filed; how transmitted.



public money belonging to the treasury of any other subdivision of the state or of a special taxing district or to any custodian of public funds other than the treasurer of state, the treasurer of a city, the treasurer of a city school district or the treasurer of a village, or to the disposition of public property belonging to such subdivision or special taxing district, or to any custodian of public property not otherwise mentioned herein, the certified copy thereof shall be filed with the prosecuting attorney of any county in which such political subdivision or special taxing district or part thereof is located, or in which such custodian of public money or public property resides. Such copy of the report may be so filed by expressing or mailing it to the office of the attorney general, city solicitor, mayor or prosecuting attorney, as the case may be.

If the report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated, the officer receiving such certified copy of such report, other than the auditing department of the taxing district, may, within ninety days after the receipt of such certified copy of such report, institute or cause to be instituted, and each of said officers is hereby authorized and required so to do, civil actions in the proper court in the name of the political subdivision or taxing district to which such public money is due or such public property belongs, for the recovery of the same and shall prosecute, or cause to be prosecuted the same to final determination. Any mayor of a village is hereby authorized and required to employ legal counsel for such purpose, who shall be paid out of the treasury of the village on voucher approved by the mayor and on warrant of the village clerk, and the amount of such compensation shall constitute a charge against said village notwithstanding the failure of the council thereof to appropriate money or levy funds therefor. Each prosecuting attorney, city solicitor, or legal counsel employed by a mayor of a village shall forthwith notify the attorney general of the filing of such actions and keep him fully advised of the progress thereof; and the attorney general or his assistant may appear in any such action on behalf of the particular political subdivision or taxing district and may, either in conjunction with or independent of such prosecuting attorney, city solicitor or legal counsel employed by a mayor, prosecute the same to final determination; and the attorney general may, when in his judgment it is proper or there is good reason for so doing, if requested so to do by the auditor of state, bring the action in all cases where the prosecuting attorney, city solicitor or mayor fails or neglects to do so within ninety days after a report of an examination has been so filed.

If a report sets forth any malfeasance or gross neglect of duty on the part of any officer or employe for which a criminal penalty is provided by law, a certified copy thereof

Collection of amounts found due by bureau; officer authorized to institute proceedings; employment of counsel.

Attorney general shall be notified of the filing and progress of actions.

When attorney general may bring action.

Criminal proceedings, when instituted.

shall be filed with the prosecuting attorney of the county in which the offense is committed, and such prosecuting attorney shall, within ninety days after receipt thereof, institute criminal proceedings against such officer or employe.

Claims shall not be abated or compromised.

No claim for money or property found in any such report to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions, by any board or officer or by order of any court unless the attorney general shall first give his written approval thereof.

"Public money" defined; payment to taxing district.

The term "public money" as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials, shall be liable therefor. All money received under color of office and not otherwise paid out according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner; if not claimed within a period of five years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected.

Submission to attorney general before entry of final order.

No judgment or final order shall be entered in any civil action commenced under the authority or direction of this section until such entry shall have been submitted to the attorney general, and the attorney general is hereby constituted an attorney of record in each such action.

HISTORY.—R. S. § 181a-8; 95 v. 514; 97 v. 273, § 8; 101 v. 382; 103 v. 506 (507); 108 v. Pt. II 1115.

## CHAPTER 17

### SCHOOL HOUSES AND LIBRARIES

#### SECTION

- 7620. Powers and duties of boards.
- 7620-1. Board of education authorized to co-operate with board of adjacent school district in another state in purchase and construction of school property.
- 7621. Display of national flag over or within school buildings.
- 7621-1. Duty of county superintendent; report to prosecuting attorney; prosecution.
- 7622. Regulating use of school houses.
- 7622-1. School and other public buildings available for educational and recreational purposes.
- 7622-1a. Use of school house and grounds for public meetings.
- 7622-2. Citizens applying responsible for damage.
- 7622-3. Use of school houses and grounds for certain public meetings.
- 7622-4. Supervision and conduct of social and recreational work.
- 7622-5. Use in cities.
- 7622-6. Co-operation with other public officials.
- 7622-7. Tax levy for social center fund.
- 3616. General powers of municipal corporations.
- 3657. Certain municipal regulations not to extend to public school entertainments.
- 3963. Municipality to furnish water free to public school buildings.
- 14769. Municipality not to charge for water furnished to public school buildings.
- 3761. Board of education authorized to provide for sprinkling streets abutting on school property.
- 4424. Board of health to abate nuisance on school property.
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- 7623. Directions for bidding and for letting contracts.
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#### SECTION

- 7625. A board may issue bonds to purchase or construct school property. Notice of election.
- 7626. Issue of bonds when proposition approved.
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- 7628. Tax levy to pay bonds thus issued.
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- 7643-1. Creation of county library district.
- 7643-2. Trustees of county library district; how appointed.
- 7643-3. Tax levy for county library district; limit of tax.
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- 7643-5. Trustees of county library district may contract with libraries within county for use of libraries.
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- 4065-2. Supervision and maintenance vested in whom; employment of leaders, etc.
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- 4065-4. Organization of board.
- 4065-5. Joint requisition and maintenance.
- 4065-6. Bond issue authorized.
- 4065-7. How expenses paid.



Powers and  
duties of  
boards.

SECTION 7620. The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also, shall provide fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.

HISTORY.—R. S. § 3987; 70 v. 195, § 55; 82 v. 86; 83 v. 84; 89 v. 95; 102 v. 419; 108 v. Pt. I 187.

Boards of education are vested with the title to the property of their respective districts in trust for the use of public school, and the appropriation of such property to private use is unauthorized.

A lease of a public school house for the purpose of having a private or select school taught therein for a term of weeks, is in violation of the trust; and such use of the school house may be restrained at the suit of a resident tax-payer of the district. *Weir vs. Day*, 35 O. S. 143.

Boards of education are possessed only of such limited powers as are expressly provided by statute, and persons who deal with such boards are held and presumed to know the limits within which they can lawfully transact business, and can secure no rights which are enforceable by a contract unless the contract is clearly authorized by law. *State ex rel Freed*, 10 O. S. 294.

While a township board of education has exclusive control within its jurisdiction in the selecting of a school house district and of the size and character of the building to be erected thereon, yet, where such board, without any valid reason or necessity therefor, is about to expend the public funds in taking down a suitable and satisfactory school building on a central and improved lot, and re-erect it at another place in the district, a court of equity may properly enjoin the same as an abuse of discretion and authority. *Watkins vs. Hall*, 13 O. C. C., 255.

Section 7620, General Code, vests in boards of education the power to select school sites, and in the absence of abuse of discretion, fraud or collusion, the exercise of such power will not be interfered with by a reviewing court.

The insertion in a resolution of a board of education of a rural school district that a certain village was the most suitable locality for a school site, and the representations made by such board at the time a bond issue was submitted to the electors, cannot limit the power of such board to lawfully exercise its discretion and change the location of the site to meet the then needs of the school district. *State ex rel vs. Board of Education*, 11 App. 146.

Under this section Telurian globes were held to be apparatus and not furniture. *Board of Education vs. Andrews*, 51 O. S., 199; see *State ex rel vs. Freed supra*.

School and reading charts were held not to be apparatus; and the amount which might be expended thereon was not limited by special statute limiting the amount that might be expended for apparatus. *State ex rel vs. Township Treasurer*, 2 O. C. C., 363.

The same was upheld with respect to cabinets, which contained charts or maps which were to be attached to the wall. *Bank vs. Board of Education*, 15 O. C. C., 561.

Section 7620 G. C. makes it the mandatory duty of the board of education of the school district to build and keep in good repair fences inclosing school houses. Op. Atty. Gen. (1911), p. 1212.

Held on consideration of the provisions of this section and those of Section 4749 G. C., that a board of education may legally construct a foot bridge upon a strip of land in which a right of way for a walk had been deeded to it; and a condition in the deed for such right of way providing for its use by the board of education in common with the grantor will not invalidate its action. Op. Atty. Gen. (1912), p. 1842.

Where a township rural district school house is located upon a private road, other lawful means for securing the necessary and convenient approach to the school house being absent, it is proper for the board of education to provide for the construction of a bridge on this road. Op. Atty. Gen. (1914), p. 247.

This section does not authorize a board of education of a rural or village school district to pay from school funds the expenses of representatives sent by it to inspect schools or school buildings in other school districts to the end that the members of the board of education may have more definite knowledge in caring for the betterment of the schools of the district. Op. Atty. Gen. (1915), p. 456.

Held that this section confers upon a board of education ample authority to lease sites for school houses. Op. Atty. Gen. (1915), p. 1289.

Boards of education are authorized under the provisions of Section 7620 G. C., where the same is necessary for the convenience of pupils who drive to school, to erect a stable for the shelter and protection of the horses, vehicles and conveyances of such pupils. Op. Atty. Gen. (1916), p. 1483.

A board of education has no authority to erect a school building outside of a school district. Op. Atty. Gen. (1917), p. 753.

Rights of way can be acquired by a board of education only from public highways to school house grounds, and not from school house grounds across private property to the residences of various pupils. Op. Atty. Gen. (1918), p. 670.

Before a board of education can enter into a contract to rent a certain building for school purposes at a consideration of \$10,500 for the entire term of five years, the certificate of the clerk must be filed showing that the money required for the payment of such appropriation is in the treasury of the clerk of the fund from which it is to be drawn and not appropriated for any other purpose. Op. Atty. Gen. (1918), p. 1440.

A board of education can rent or let suitable school rooms, but can not enter into a contract to purchase or construct a school building at some future time unless the money for the same is in the treasury of the clerk of the proper fund and so certified by the clerk of the board.

A board of education can purchase a building to be used for school purposes, but money required for the same must be in the treasury or in process of collection. Op. Atty. Gen. (1919), p. 428.

Where a board of education under the authority of Section 7620 G. C. rents or leases a room for temporary school purposes, such rooms do not constitute a school building within the meaning of Section 7630-1 G. C. Op. Atty. Gen. (1919), p. 871.

A board of education has no authority to use school funds to erect a residence for superintendent and teachers, nor has the board of education a right to remodel one of its old buildings into a residence for superintendent and teachers. Op. Atty. Gen. (1919), p. 1326.

Under the broad grant of powers found in the law in G. C., Sec. 7690, as to control and management, and in G. C. Sec. 7620, as to building, repair and purchases a central school building may be erected to house the elementary and high schools of a rural school district. Op. Atty. Gen. (1920), p. 885.

It is not required by the law that architects shall be employed or secured by a board of education through competitive bidding;

but when the services of an architect are required the board of education has power to employ one. Op. Atty. Gen. (1920), p. 886.

The lighting of a school building is a part of its necessary furnishing or equipment, and the board of education of a rural school district may contract for current for light, paying a connection fee for the line furnishing such current, if in the judgment of the board of education such method is most advantageous for its schools. Op. Atty. Gen. No. 2191, June 25, 1921.

Boards of education are impliedly authorized under the provisions of sections 7620 and 4750 G. C. to expend and provide for the payment of automobile mileage to officers and employes using their private automobiles in the performance of official duties, when such transportation services are required by said board, and deemed necessary for the best interests of the schools under their jurisdiction.

The question of whether or not ten cents per mile is a fair and reasonable remuneration to be paid for the use of such privately owned automobiles, is one of fact, depending upon local conditions, and within the discretionary powers of the board of education to determine. Op. Atty. Gen. No. 2753, Dec. 31, 1921.

Under the provisions of section 7620 G. C. boards of education may lawfully purchase books and other periodicals for their official use and that of the pupils, when deemed advantageous and for the best interests of the schools under their management and control. Op. Atty. Gen. No. 3016, April 21, 1922.

Since section 7620 G. C. has been amended as set forth in 108 O. L., Part 1, page 187, a board of education may purchase property and erect a school building and control a school outside of the territorial limits of the district, under its control. Op. Atty. Gen. No. 3213, June 12, 1922.

See opinions of Attorney General No. 2352 (1921), cited under Sec. 7690.

School district adjacent to one of another state, may agree to construct and maintain a school jointly.

SECTION 7620-I. That, whenever, in the judgment of a board of education of any school district in this state, lying adjacent to a school district of another state, the best interests of the public schools can be promoted by purchasing school grounds, repairing or erecting a school house or school houses, and maintaining jointly between the two adjacent school districts, the board of education of the school district of this state so situated is hereby empowered to enter into an agreement with the school authorities of said adjacent school district for the purpose of purchasing school grounds, repairing or constructing a school building or buildings, purchasing school furniture, equipment, appliances, fuel, employing teachers and maintaining a school when, in the judgment of said board of education of this state the best interests of the public school can be promoted by so doing; and such board of education of this state is hereby empowered to levy taxes and perform such other duties in maintaining such joint school as are otherwise provided by law for maintaining the public schools in this state.

In carrying out the provisions of this act the school district shall pay such proportion of the cost of purchasing school grounds, repairing or erecting a new building or buildings, and in maintaining the joint school as shall seem to be equitable and just in the judgment of the board of education and trustee or trustees of the two adjacent school districts.



SECTION 7621. All boards of education, all proprietors or principals of private schools and all authorities in control of parochial schools or other educational institutions shall display the United States national flag, not less than five feet in length, over or within all school houses under their control, during each day such schools are in session. In all public schools the boards of education shall make all rules and necessary regulations for the care and keeping of such flags, the expense thereof to be paid out of their contingent fund.

Display of national flag over or within school buildings.

HISTORY.—R. S. § 3986-1; 92 v. 86, § 1; 108 v. Pt. I 133.

SECTION 7621-1. It shall be the special duty of the county superintendent of schools to see that the provisions of section 7621 of the General Code are enforced, and he shall promptly report all violations thereof to the prosecuting attorney of the county, whose duty it shall be to institute prosecutions against all persons violating the provisions of section 7621 of the General Code in his respective county.

Duty of county superintendent; report to prosecuting attorney; prosecution.

HISTORY.—108 v. Pt. I 133 (134).

Held that the provisions of Section 7621-1 G. C., 108 O. L., 134, confer special duties upon county superintendents of schools and prosecuting attorneys to enforce the provisions of Section 7621 G. C., as amended 108 O. L., 133, and is not violative of the constitution of Ohio or within any of its inhibitions. Op. Atty. Gen. (1919), p. 119.

SECTION 7622. When, in the judgment of a board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, religious exercises, select or normal schools, the board of education shall authorize the opening of the school-houses for such purposes. The board of education of a school district in its discretion may authorize the opening of such school-houses for any other lawful purposes. But nothing herein shall authorize a board of education to rent or lease a school-house when such rental or lease in any wise interferes with the public schools in such district, or for any purpose other than is authorized by this chapter.

Regulating use of school-houses.

HISTORY.—R. S. § 3987-1; 91 v. 44; 89 v. 147; 87 v. 240; 86 v. 11. As to powers of boards of education, see G. C. § 4749.

The board of education has no authority in law to rent a school building, or part thereof, to a secret society for the purpose of holding lodge sessions and such social functions and entertainments of such society as are not open to all persons in the community on equal terms or which will not, in the judgment of the board of education, benefit the people of the community. Op. Atty. Gen. (1915), p. 369.

The chief inspector of work shops and factories and public buildings is without authority to issue an order to a board of education to discontinue the practice of charging admission to motion picture entertainments. Op. Atty. Gen. (1919), p. 1401.

See opinions of Attorney General, No. 2918 (1922), cited under Sec. 7704.

School and other public buildings available for educational and recreational purposes.

SECTION 7622-1. That upon application of any responsible organization, or of a group of at least seven citizens, all school grounds and school houses, as well as all other buildings under the supervision and control of the state, or buildings maintained by taxation under the laws of Ohio, shall be available for use as social centers for the entertainment and education of the people, including the adult and youthful population, and for the discussion of all topics tending to the development of personal character and of civic welfare. Such occupation, however, should not seriously infringe upon the original and necessary uses of such properties. The public officials in charge of such buildings shall prescribe such rules and regulations for their occupancy and use as herein provided as will secure a fair, reasonable and impartial use of the same.

HISTORY.—106 v. 552. For an analogous section, see G. C. § 2457-1 (103 v. 830, § 1).

The chief inspector of work shops and factories and public buildings is without authority to issue an order to a board of education to discontinue the practice of charging admission to motion picture entertainments. Op. Atty. Gen. (1919), p. 1401.

Use of school house and grounds for public meetings.

SECTION 7622-1a. Upon the application of a committee representing any candidate for public office or any regularly organized or recognized political party, the board of education having control of any school grounds mentioned in section 7622-1 of the General Code, shall permit the same to be used as a place wherein to hold meetings of electors for the discussion of public questions and issues, provided that no such meeting shall be held during regular school hours. No charge shall be made for such use, but the candidate or committee so holding a meeting shall be responsible for any damage done or expense incurred by reason thereof.

HISTORY.—107 v. 449.

Citizens applying responsible for damage.

SECTION 7622-2. The organization or group of citizens applying for the use of properties as specified in section 7622-1 of the General Code shall be responsible for any damage done them over and above the ordinary wear, and shall, if required, pay the actual expense incurred for janitor service, light and heat.

HISTORY.—106 v. 552. For an analogous section, see G. C. § 2457-2 (103 v. 830, § 2).

Use of school houses and grounds for certain public meetings.

SECTION 7622-3. The board of education of any school district shall, upon request and the payment of the proper janitor fees, subject to such regulation as may be adopted by such board, permit the use of any schoolhouse and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following purposes:

1. For giving instructions in any branch of education, learning or the arts.

2. For holding educational, civic, social or recreational meetings and entertainments, and for such other purposes as may make for the welfare of the community. Such meetings and entertainments shall be non-exclusive and open to the general public.

3. For public library purposes, as a station for a public library, or as reading rooms.

4. For polling places, for holding elections and for the registration of voters, for holding grange or similar meetings.

HISTORY.—106 v. 552; 107 v. 607. For a prior section analogous to the section bearing this number in Supp. to P. & A. Code, see G. C. § 2457-3 (103 v. 830, § 3).

The board of education may permit the use of a school house and rooms therein, and the grounds and other property under its control for holding grange meetings. The board may regulate such use, but the same shall in no manner interfere with the use of such property for school purposes. Op. Atty. Gen. (1917), p. 442.

The board of education has a right upon request and upon the payment of the proper janitor fees to permit the use of any school house and the rooms therein and the grounds and other property under its control for the use of holding grange meetings, when the same is not in actual use for school purposes. The fact that the grange holds secret sessions will not prevent the provisions of Section 7622-3 applying as authority for the holding of such meetings. Op. Atty. Gen. (1917), p. 2438.

See opinions of Attorney General No. 2191 (1921), cited under Sec. 7620.

SECTION 7622-4. Upon the nomination of the superintendent of any school district the board of education of such district may employ a person or persons to supervise, organize, direct and conduct social and recreational work in such school district. The board of education may employ competent persons to deliver lectures, or give instruction on any educational subject, and provide for the further education of adult persons in the community.

Supervision and conduct of social and recreational work.

HISTORY.—106 v. 552. For an analogous section, see G. C. § 2457-3 (103 v. 830, § 3).

Sections 7622-4 and 7622-7, supplemental sections appearing in House Bill 549 (106 O. L., 552) have no reference to the county board of education, but the sections refer to those local boards of education which have control of the use of school buildings. This being true as to general expenditures, it is at once apparent that the county board of education could not purchase, operate and maintain a moving picture machine under authority of sections 7622-4 and 7622-7 of the General Code. Op. Atty. Gen. No. 3115, May 18, 1922.

SECTION 7622-5. In cities employing a person to direct and supervise social and recreational work such person may use the school buildings, grounds, and other public buildings or grounds in such city for the purposes indicated in section 7622-3 of the General Code subject to the limitations provided in sections 7622-1 to 7622-3 of the General Code.

Use in cities.

HISTORY.—106 v. 552 (553). For an analogous section, see G. C. § 2457-3 (103 v. 830, § 3).

See opinions of Attorney General, No. 2918 (1922), cited under Sec. 7704.



Co-operation  
with other  
public  
officials.

SECTION 7622-6. Boards of education may co-operate with commissioners, boards or other public officials having the custody and management of public parks, libraries, museums and public buildings and grounds of whatever kind in providing for education, social, civic and recreational activities, in buildings and upon grounds in the custody and under the management of such commissioners, boards or other public officials.

HISTORY.—106 v. 552 (553).

Tax levy for  
social center  
fund.

SECTION 7622-7. The board of education of any school district or a municipality may levy annually upon the taxable property of such school district or municipality within the limitations of sections 5649-2 of the General Code, not to exceed two-tenths of a mill for a social center fund to be used for social and recreational purposes.

HISTORY.—106 v. 552 (553). For an analogous section, see G. C. § 2457-3 (103 v. 830, § 3).

A board of education has no authority to use school funds to erect a residence for superintendent and teachers, nor has the board of education a right to remodel one of its old buildings into a residence for superintendent and teachers. Op. Atty. Gen. (1919), p. 1326.

Powers by  
ordinance or  
resolution.

SECTION 3616. All municipal corporations shall have the general powers mentioned in this chapter, and council may provide by ordinance or resolution for the exercise and enforcement of them.

HISTORY.—99 v. 5, § 7; 97 v. 504, § 7; 96 v. 21, § 7; 96 v. 26, § 8; Bates, §§ 1536-100, 1536-101. For an analogous section, see R. S. § 1692.

Regulation  
by license,  
shows,  
games, traf-  
ficking in  
tickets, etc.

SECTION 3657. To regulate, by license or otherwise, restrain or prohibit theatrical exhibitions, public shows and athletic games of whatever name or nature, for which money or other reward is demanded or received; to regulate, by license or otherwise, the business of trafficking in theatrical tickets, or other tickets of licensed amusements, by parties not acting as agents of those issuing them, but public school entertainments, lecture courses and lectures on historic, literary or scientific subjects, shall not come within the provisions of this section.

HISTORY.—99 v. 5, § 7g; 97 v. 535, § 7-7; 96 v. 22, § 7-7; Bates, § 1536-100; 102 v. 83. For an analogous section, see R. S. § 1692.

Water supply  
free for cer-  
tain pur-  
poses.

SECTION 3963. No charge shall be made by a city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, the cleaning of market houses, the use of any public building belonging to the corporation, or any hospital, asylum, or other charitable institutions, devoted to the relief of the poor, aged, infirm, or destitute persons, or orphan or delinquent children, or for the use of the public school buildings in such city or village.

But in any case where the school district, or districts, include territory not within the boundaries of the city or village, a proportionate charge for water service shall be made in the ratio which such tax valuation of the property outside the city or village bears to the tax valuation of all the property within such school district, subject to the rules and regulations of the waterworks department of the municipality governing, controlling, and regulating the use of water consumed.

School district not wholly within municipality.

HISTORY.—S. & C. 1529; R. S. § 2417; Bates, § 1536-528; 70 v. 11, § 344; 76 v. 84, § 1; 102 v. 94; 108 v. Pt. II 1160. For an analogous section, see R. S. § 2417a.

The tax valuation of all property within a certain school district which includes territory not within the boundary of the city is \$12,000,000, and the tax valuation of the property outside of the city is \$2,000,000. Held, that under Section 3963 G. C., which provides that in such cases a proportionate charge for water service shall be made in the ratio which the tax valuation of the property outside the city bears to the tax valuation of all the property within the school district, the school district should pay one-sixth of the duly established water rates for the entire school district. Op. Atty. Gen. (1920), p. 290.

Under the provisions of Section 3963 G. C., as now in force, a city or village is not required or authorized to furnish free water service to the school district in which said city or village is situated, when said city school district includes territory outside of the boundaries of the city or village.

Section 3963 G. C. was amended in H. B. 561 and in the absence of a referendum against the measure, it will become operative May 12, 1920. The amended section only requires a city board of education of a district which includes territory outside of the boundaries of the city to pay its proportionate share for water service furnished said district in the ratio which the tax valuation of the property outside of the city or village bears to the tax valuation of all the property within the district. Op. Atty. Gen. (1920), p. 325.

For a board of education, in order to be furnished city water, to enter into an agreement, to extend the water mains in the city street on a naked promise of the city commission to repay the initial cost of such extension, at a time when, under city control and management, a six per cent profit from water takers thereon is made by the city, is an arrangement of such indefinite and doubtful character for the board, that it should be avoided. The right of a consumer to enforce a demand for water service is, in general, conceded, but to enforce a demand for the extension of a water main depends upon all the facts and circumstances of the case. Op. Atty. Gen. (1920), p. 1234.

See opinions of Attorney General No. 1840 (1921), cited under Sec. 7635.

SECTION 14769. No charge shall be made by the trustees or board for supplying water for extinguishing fires or cleaning fire apparatus, or for furnishing and supplying connections and fire hydrants, and keeping the same in repair, for fire department purposes, or the cleaning of market-houses, or for the use of public school buildings, or for the use of any public buildings belonging to the corporation, or for any hospital, asylum, or other charitable institution devoted to the relief of the poor, the aged, infirm, or destitute persons, or orphan children, and in cities of the first grade of the first class the board of city commissioners may, when it deems expedient, supply water without charge to any zoo-

No charge for water to extinguish fires in municipalities.

logical garden in or near such cities, so long as the company or association owning such garden pays no dividend to its stockholders; but any member of such board may at any time enter such garden and examine into any waste or unnecessary use of the water, and the board may, at any time, revoke the grant of such free use of water.

HISTORY.—70 v. 11, § 344; 76 v. 84, § 1; (S. & C. 1529); R. S. of 1880.

Term  
"owner" de-  
fined.

SECTION 3761. The term "owner", within the meaning of these provisions for such treatment with oil, or sprinkling with water, shall be held to include the legal or equitable owner, the person in whose name the property may be assessed for taxation on the tax duplicate, or a tenant giving satisfactory guaranty that the assessment against the property signed for will be paid, or the board of education having the control of any school property, and any such board of education is authorized to provide for sprinkling with water or treatment with oil any street abutting on such property by private contract, and pay for the same as other contingent expenses.

HISTORY.—98 v. 52, § 5; R. S. Bates, § 1536-175j; 102 v. 304.

Nuisance or  
unsanitary  
conditions on  
school prop-  
erty may be  
corrected.

SECTION 4424. The board of health shall abate all nuisances and may remove or correct all conditions detrimental to health or well-being found upon school property by serving an order upon the board of education, school board or other persons responsible for such property, for the abatement of such nuisance or condition within a reasonable but fixed time. A person failing to comply with such order, unless good and sufficient reason therefor is shown, shall be fined not to exceed one hundred dollars. The board may appoint such number of inspectors of schools and school buildings as it deems necessary to properly carry out these provisions.

HISTORY.—R. S. § 2137; Bates, § 1536-754; 66 v. 203, § 322; 99 v. 92; 95 v. 433.

Board shall  
inspect  
schools and  
may close  
them and  
prohibit pub-  
lic gather-  
ings.

SECTION 4448. Semi-annually, and oftener if in its judgment necessary, the board of health shall inspect the sanitary condition of all schools and school buildings within its jurisdiction, and may disinfect any school building. During an epidemic or threatened epidemic, or when a dangerous communicable disease is unusually prevalent, the board may close any school and prohibit public gatherings for such time as it deems necessary.

HISTORY.—R. S. § 2137; Bates, § 1536-754; 66 v. 203, § 322; 90 v. 92; 95 v. 433.

Duties of in-  
spector.

SECTION 1261-3. It shall be the duty of said inspector of plumbing, as often as instructed by the state board of health, to inspect any and all public or private institutions, sanitariums, hospitals, schools, prisons, factories, workshops, or places where men, women or children are or might be employed, and to condemn any and all unsanitary or defective plumbing that may be found in connection therewith,



and to order such changes in the method of construction of the drainage and ventilation, as well as the arrangement of the plumbing appliances, as may be necessary to insure the safety of the public health.

Such inspector shall not exercise any authority in municipalities or other political subdivisions wherein ordinances or resolutions have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof.

HISTORY.—101 v. 395, § 3; 107 v. 608 (609).

SECTION 7623. When a board of education determines to build, repair, enlarge or furnish a school house or school-houses, or make any improvement or repair provided for in this chapter, the cost of which will exceed in city districts, fifteen hundred dollars, and in other districts five hundred dollars, except in cases of urgent necessity, or for the security and protection of school property, it must proceed as follows:

Directions  
for bidding  
and for let-  
ting con-  
tracts.

1. For the period of four weeks, the board shall advertise for bids in some newspaper of general circulation in the district, and two such papers, if there are so many. If no newspaper has a general circulation therein, then by posting such advertisement in three public places therein. Such advertisement shall be entered in full by the clerk, on the record of the proceedings of the board.

2. The bids, duly sealed up, must be filed with the clerk by twelve o'clock, noon, of the last day stated in the advertisement.

3. The bids shall be opened at the next meeting of the board, be publicly read by the clerk, and entered in full on the records of the board.

4. Each bid must contain the name of every person interested therein, and shall be accompanied by a sufficient guarantee of some disinterested person, that if the bid be accepted, a contract will be entered into, and the performance of it properly secured.

5. When both labor and materials are embraced in the work bid for, each must be separately stated in the bid, with the price thereof.

6. None but the lowest responsible bid shall be accepted. The board in its discretion may reject all the bids, or accept any bid for both labor and material for such improvement or repair, which is the lowest in the aggregate.

7. Any part of a bid which is lower than the same part of any other bid, shall be accepted, whether the residue of the bid is higher or not; and if it is higher, such residue must be rejected.

8. The contract must be between the board of education and the bidders. The board shall pay the contract price for the work, when it is completed, in cash, and may pay monthly estimates as the work progresses.

9. When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between such bidders.

10. When there is reason to believe that there is collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected.

HISTORY.—R. S. § 3988; 70 v. 195, § 55; 97 v. 356.

This section is mandatory in its requirements, rather than directory. The urgent necessity referred to in this section, which excuses compliance with the statutory requirement with respect to advertisement for bids, is determined by the circumstances of the particular case in which it arises. The necessity for the completion of a high school building, which was already in use by some of the pupils who found ingress without passing through the main corridor while the work in question remained to be done, did not present a case of urgent necessity as to release the board of education from the necessity of advertising for bids for the customary period in the manner provided by this section. *Mueller vs. Board of Education*, 11 O. N. P. (N. S.), 113.

A contract between the boards of education and the lowest bidder for an excavation for a school house based upon a bid which the contractor was allowed to amend and increase, on account of an alleged mistake which did not appear on the face of the original bid, is void, although the bid as amended was still the lowest bid received.

Such contract being void, there can be no recovery thereon, or for the value of the work or labor performed thereon. *McGreevy vs. Board of Education*, 20 O. C. C., 114.

Where bids for public work received in response to advertisement are ignored, and a contract is awarded upon a bid based upon conditions not contained in the original specifications, and received subsequent to the time designated in the advertisement, the award is wholly unauthorized and illegal, and upon application of a court of competent jurisdiction, may be enjoined. *State ex rel vs. Board of Education*, 6 O. C. C. (N. S.), 345.

A contract for the building of a school house, awarded to a contractor who has been permitted to change his bid by omitting various items, thus reducing the aggregate cost to the amount realized from the sale of bonds, is a contract made without notice or competition and is illegal and void under Section 7620 General Code. *McAlexander vs. Haviland School District*, 7 O. N. P. (N. S.), 590.

Where one seeks to compel by mandamus a board of education to award him the contract for erecting a school building, he must show clear legal right in himself. It is not enough that he show defects in the title of another to whom the contract has been awarded. *State ex rel. vs. Board of Education*, 42 O. S., 374.

Where, under the provisions of this section, a board of education has in good faith exercised its judgment respecting the responsibility of bidders, mandamus will not lie to review its decision. *State ex rel. vs. Board of Education*, 6 O. N. P., 347.

Held, that this section did not require a board of education to advertise for bids for fuel. *Gosline vs. Board of Education*, 11 O. C. C. (N. S.), 195.

Bids for installation of apparatus controlled by patents are not competitive and the statute requiring the acceptance of the lowest responsible bid does not apply; moreover, by reason of the provisions of Section 2362, General Code, such bids are not required to comply with paragraph 5 of Section 7623, General Code. *State vs. Board of Education*, 14 O. C. C., 15.

A board of education may be enjoined from accepting a bid when such bid is based on a mathematical error or mistake in measurements which would involve the bidder in serious financial

loss, were the board to insist upon the execution of a contract based on such bid. *Concrete Construction Company vs. Board of Education*, 11 O. N. P. (N. S.), 86.

Where a statute governing the award of a public contract provides that the contract shall be let to the lowest responsible bidder, and the lowest bidder has submitted two samples with a different price upon each sample, both of which are lower than the prices submitted by any other bidder, the public officers may award the contract to the lowest bidder, but not for the goods made according to the more expensive sample. *Locher vs. Haserot et. al.* 23 O. C. C. (N. S.), 552.

The sixth clause of this section, which provides that a board of education may in its discretion, reject all bids, does not authorize the acceptance of any but the lowest responsible bid.

Section 7623 G. C., requiring that bids for the erection of a school building be "accompanied by a sufficient guarantee of some disinterested person" vests the board of education with a certain discretion, but does not empower it to demand more than the statute intends.

When the board, therefore, has provided that bids be accompanied by a certified check for ten per cent of the bids and the lowest bidder accompanies his bid by a surety company bond equal to its amount, for its payment, the board cannot reject the bid unless bona fide it does not consider the guarantee sufficient. *Op. Atty. Gen.* (1911), p. 1195.

Cases of urgent necessity are excepted from the provisions of Section 7623 G. C., providing for certain procedure when the cost of repairing or improving a school house in other than city districts exceeds five hundred dollars.

Inasmuch, therefore, as the board of education is required to provide for at least thirty-two school weeks in a year, and the use of school buildings may be prohibited until compliance has been made with the orders of the chief inspector of work shops and factories, the board of education of a village school district upon such order from the chief inspector of work shops and factories made after the school year has begun, may dispense with the procedure provided for in Section 7623 G. C., and may execute necessary repairs without advertising for bids. *Op. Atty. Gen.* (1911), p. 1318.

It is the object of this statute to maintain a fair competition in the letting of contracts, and when a board of education has received bids for the construction of a school building such board of education may not make alterations in the plans and specifications for the building and permit bids received by it to be accommodated, by deductions or increases, to the changes made in such plans and specifications. *Op. Atty. Gen.* (1912), p. 1249.

In case the state building inspector orders repairs on a school building to be made by a certain date, the impossibility of completing them by such date without dispensing with competitive bidding, etc., does not create a case of "urgent need," or for the "security of protection of school property" within the meaning of Section 7623 G. C., permitting such bidding and other formalities to be dispensed with in such cases.

The interests of the schools themselves, that is, the use of the building by the pupils with safety and convenience must be consulted in order to determine whether a case for dispensing with the statutory requirements exists so that if it is anticipated that although the work cannot be completed before the building must be used for school purposes, the part remaining undone can be prosecuted without impairing the safety and usefulness of the schools, the statutory requirements may not be dispensed with; otherwise they may be disregarded. *Op. Atty. Gen.* (1914), p. 1077.

If the facts in the particular case do not justify a finding of "urgent necessity" by a board of education of a school district within the meaning of Section 7623 G. C., a failure on the part of said board to comply with the requirements of said section renders



the contract for the construction or repair of a school building void. Op. Atty. Gen. (1915), p. 835.

A board of education may advertise for bids for heating and ventilating a school building under such general specifications as to permit bids being offered for the installation of any system of heating and ventilating, which system may be determined by the board after the bids are opened. Op. Atty. Gen. (1916), p. 148.

A board of education is without power to change the plans and specifications for a school house after bids have been received by striking out the lathing, plastering, blackboards, painting, finishing work, roofing, sheet metal work and electrical wiring, and is without power to accept the bid on only the remainder of such plans and specifications.

A contract cannot be awarded where the total amount of the lowest bid is in excess of the amount of money in the treasury appropriated for that purpose.

None but the lowest bid shall be accepted, but the board of education may reject all bids. Op. Atty. Gen. (1917), p. 692.

A board of education can only dispense with advertisement for bids for the building of a new school building in case there exists an "urgent necessity" therefor. "Urgent necessity" means more than convenience and more than ordinary necessity. It is something which requires immediate action; something that cannot wait. When pleaded as an excuse for a failure to comply with any statutory requirement, it must be decided by the circumstances of the particular case in which it arises. The mere fact of itself that a school building is unfit for use of the schools does not create a case of urgent necessity, but, coupled with other circumstances, may do so. Op. Atty. Gen. (1917), p. 1672.

Where a school building is destroyed by fire and there are no other buildings in the district in which the schools can be conducted, and a new building can be completed before the new school term, if advertisement under Section 7623 is dispensed with, but cannot be completed if time for advertisement is taken, then and in that case there would be a case of urgent necessity and the board may proceed to let the contract without advertising for bids for a period of four weeks. Op. Atty. Gen. (1918), p. 739.

A board of education may not enter into a contract for a new school building and ignore the provisions of law relating to the letting of contracts therefor.

"Urgent necessity" means more than convenience and more than ordinary necessity. It is something which requires immediate action; something which cannot wait. When pleaded as an excuse for a failure to comply with any statutory requirement it must be decided by the circumstances of the particular case in which it arises, and where a case of urgent necessity exists the provisions of Section 7623 G. C. do not apply.

A board of education may enter into a contract for a new school building at an amount in excess of the amount raised by the sale of bonds, provided there is sufficient money in the building fund of such district to make up the difference between the amount of the bond issue and the amount of the contract price.

A board of education is without authority to go into the open market and secure laborers, purchase materials and build a school house by force account and without advertising and letting the contract as is provided by law. Op. Atty. Gen. (1918), p. 591.

A board of education is without authority to let a contract for the furnishing of labor on a school building at ten per cent of the cost of material; and all contracts exceeding fifteen hundred dollars in city school districts and five hundred dollars in other school districts let by a board of education for such labor, must be by competitive bidding and in compliance with Section 7623 G. C. Op. Atty. Gen. (1919), p. 1034.

See opinions of Attorney General No. 2191 (1921), cited under Sec. 7620.

## GENERAL PROVISIONS.

SECTION 2362. An officer, board or other authority of the state, a county, township, city, village, school or road district or of any public institution belonging thereto, authorized to contract for the erection, repair, alteration or rebuilding of a public building, institution, bridge, culvert or improvement and required by law to advertise and receive proposals for furnishing of materials and doing the work necessary for the erection thereof, shall require separate and distinct proposals to be made for furnishing such materials or doing such work or both, in their discretion, for each separate and distinct trade or kind of mechanical labor, employment or business entering into the improvement.

Separate bids for work and materials.

HISTORY.—R. S. § 794; 85 v. 218; 74 v. 186, § 1.

SECTION 2363. When more than one trade or kind of mechanical labor, employment or business is required no contract for the entire job, or for a greater portion thereof than is embraced in one such trade or kind of mechanical labor shall be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids therefor in the aggregate.

When contract shall not be awarded for entire work.

HISTORY.—R. S. § 794; 85 v. 219; 74 v. 186, § 1.

SECTION 2364. The contract for doing the work belonging to each separate trade or kind of mechanical labor, employment or business or for the furnishing of materials therefor, or both, shall be awarded by such officer, board or other authority in its discretion, to the lowest and best separate bidder therefor, and shall be made directly with him or them in the manner and upon the terms, conditions and limitations as to giving bond with security and otherwise as prescribed by law, unless it is let as a whole, or to bidders for more than one kind of work or materials. The provisions of this and the preceding two sections shall not apply to the erection of buildings and other structures of a less cost than ten thousand dollars.

Each contract shall be for only one class of labor or material; exceptions.

HISTORY.—R. S. § 794; 85 v. 218; 74 v. 186, § 1.

SECTION 2365. The bonds provided for in this chapter required to be taken by a board or officer of the county, township, city, village or school district of the state shall not exceed fifty per cent of the estimated cost of such public building, bridge substructure or superstructure, or repairing, altering or rebuilding thereof. The officers named herein may require the person or persons on the bond of the successful bidder or bidders to qualify that they are residents of the state, and jointly worth a greater sum than the amount named in the bond over and above all liabilities and exemptions allowed by law.

Limitation on bonds; qualification of sureties.

HISTORY.—R. S. § 790a; 85 v. 218, 222.

Bond and additional obligation of contractor to pay sub-contractors and material men.

SECTION 2365-1. That when public buildings or other public works or improvements are about to be constructed, erected, altered or repaired under contract, at the expense of the state, or any county, city, village, township or school district thereof, it shall be the duty of the board, officer or agent, contracting on behalf of the state, county, city, village, township, or school district, to require the usual bond as provided for in statute with good and sufficient sureties, with an additional obligation for the payment by the contractor, and by all sub-contractors, for all labor performed or materials furnished in the construction, erection, alteration or repair of such building, works or improvements.

HISTORY.—107 v. 642, § 1.

Approval of bond; conditions.

SECTION. 2365-2. Such bond shall be executed by such contractor with such sureties as shall be approved by the board, officer, or agent acting on behalf of the state, county, city, village, township or school district aforesaid, in an amount equal to at least fifty per cent. (50%) of the contract price, and conditioned for the payment by the contractor and by all subcontractors, of all indebtedness which may accrue to any person, firm or corporation, on account of any labor performed or materials furnished in the construction, erection, alteration or repair of such building, works or improvement. Such bond shall be deposited with, and held by, such board, officer or agent for the use of any party interested therein.

HISTORY.—107 v. 642, § 2.

Creditor shall furnish statement of amount due to sureties.

SECTION 2365-3. Any person, firm or corporation to whom any money shall be due on account of having performed any labor, or furnished any material in the construction, erection, alteration or repair of any such building, work or improvement, within ninety (90) days after the acceptance thereof by the duly authorized board or officer, shall furnish the sureties on said bond a statement of the amount due to any such person, firm or corporation. No suit shall be brought against said sureties on said bond until the expiration of sixty (60) days after the furnishing of said statement. If said indebtedness shall not be paid in full at the expiration of said sixty days, said person, firm or corporation may bring an action in his own name upon such bond, as provided in sections 11242 and 11243 of the General Code of the state of Ohio, said action to be commenced within one year from the date of the acceptance of said building, work or improvement.

HISTORY.—107 v. 642, § 3.

Form of bond.

SECTION 2365-4. The bond hereinbefore provided for shall be in substantially the following form, and recovery of any claimant thereunder shall be subject to the conditions and provisions of this act to the same extent as if such conditions and provisions were fully incorporated in said bond form:



KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned ..... as principal and ..... as sureties, are hereby held and firmly bound unto..... in the penal sum of ..... dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this ..... day of ....., 19.....

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the ..... day of ....., 19...., enter into a contract with ....., which said contract is made a part of this bond the same as though set forth herein;

Now, if the said ..... shall well and faithfully do and perform the things agreed by ..... to be done and performed according to the terms of said contract; and shall pay all lawful claims of sub-contractors, material men and laborers, for labor performed and materials furnished in the carrying forward, performing or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any material man or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond.

HISTORY.—107 v. 642, § 4.

SECTION 2366. Whoever, being an officer, violates any provision of this chapter shall be fined in any sum not to exceed one thousand dollars. Penalty.

HISTORY.—R. S. 799a; 85 v. 218, 222.

SECTION 7624. When it is necessary to procure or enlarge a school site, or to purchase real estate to be used for agricultural purposes, athletic field or playground for children, or for the purpose of erecting and maintaining buildings to be used as homes or houses for public school teachers, when the cost of such erection has been contributed by private donations or for the purpose of providing an outlet to dispose of sewage from a school building or grounds, and the board of education and the owner of the property needed for such purposes, are unable to agree upon the sale and purchase thereof, the board shall make an accurate plat and description of the parcel of land which it desires for such purposes, and file them with the probate judge, or court of insolvency of the proper county. Thereupon the

Appropriation of land for school purposes.

same proceedings of appropriations shall be had which are provided for the appropriation of private property by municipal corporations.

HISTORY.—R. S. § 3990; 70 v. 195, § 65; 103 v. 466; 107 v. 621 (624); 108 v. Pt. II 1223.

As to appropriation of property, see G. C. § 3677.

In determining the value of improved real estate in an appropriation proceeding a property owner may offer evidence as to the value of the improvements separate from the land and show the value of the land separate from the improvements. *Linesch et al vs. Board of Education* 13 App. 161.

In a proceeding for appropriation of lands brought by a board of education, the view of the premises had by the jury cannot be limited to the property itself, but must include its immediate surroundings. The jury is entitled to, and must necessarily see, the land immediately surrounding that which is to be appropriated.

There is no rule in such a proceeding as to the burden of proof, nor is the property owner required to prove the value of his property by any preponderance of the evidence.

There is no requirement in such a proceeding that all twelve jurors shall agree and sign the verdict. *Kraemer vs. Board of Education*, 8 App., 428.

The desire of a board of education to prevent the erection of a blacksmith shop on land adjoining school grounds is not such a necessity to procure property as will permit the appropriation of such property. *School Board vs. Peter*, 9 O. N. P. (N. S.), 232.

If a board of education of a school district, by a proper resolution of record, determines that it is necessary to procure a tract of land on which a church parsonage is located for school purposes, and that it is unable to agree with the official or officials of the church organization holding the title to said property in trust for said organization, upon the sale and purchase thereof, said board of education, acting under authority of and in compliance with the requirements of section 7624 G. C., as amended in 103 O. L., 466, may acquire the title to said property in the manner provided by law for the appropriation of private property by municipal corporation. *Op. Atty. Gen.* (1915), p. 573.

The board of education of a rural school district may not expend the funds of the district in acquiring a right of way through private property for the use of pupils residing in the district and living more than two miles from the nearest school in said district, for the purpose of relieving itself of the duty of providing transportation for such pupils under provision of Section 7731 G. C., 104 O. L., 140. *Op. Atty. Gen.* (1916), p. 930.

A village or city is without authority in law to donate to the board of education of the village or city school district a site upon which to erect a school building. *Op. Atty. Gen.* (1916), p. 861.

Taxes lawfully assessed become a lien on real property as of the day preceding the second Monday of April, and a board of education of the school district thereafter procuring such real property for school purposes either by purchase or appropriation hold such property subject to said tax lien until the same is paid.

The board of county commissioners have no power either to remit said taxes, or any part thereof, or to refund the same to the board of education after the payment thereof. *Op. Atty. Gen.* (1917), p. 144.

A board of education is without authority to expend its funds or advance money for the rent and the furnishing of a house to be used as a teachers' home; but a board of education may, under the provisions of section 7624 G. C., purchase real estate as a site for the purpose of erecting such a home for school teachers employed in the district, when the cost of the erecting of the building has been contributed by private donations. *Op. Atty. Gen.* No. 3014, April 21, 1922.

SECTION 7624-I. A municipal corporation may by ordinance duly passed authorize the transfer and conveyance by deed, of any real property owned by it and not needed for municipal purposes to the board of education of any such municipality, to be used by said board of education as an athletic field, a play ground for children or for school sites, upon such terms and conditions as are agreed to between the municipal corporation and the board of education and when such property is so conveyed, the same shall be under the control and supervision of such board of education.

Municipality may convey real property to board of education.

HISTORY.—103 v. 466.

Held that the provisions of this section confer no authority on a village or city to donate to the board of education of the village or city school district a site on which to erect a school building. *Op. Atty. Gen. (1916), p. 861.*

SECTION 7625. When the board of education of any school district determines that for the proper accommodation of the schools of such district it is necessary to purchase a site or sites to erect a schoolhouse or houses, to complete a partially built schoolhouse, to enlarge, repair or furnish a schoolhouse, or to purchase real estate for playground for children, or to do any or all of such things, that the funds at its disposal or that can be raised under the provisions of sections seventy-six hundred and twenty-nine and seventy-six hundred and thirty, are not sufficient to accomplish the purpose and that a bond issue is necessary, the board shall make an estimate of the probable amount of money required for such purpose or purposes and at a general election or special election called for that purpose, submit to the electors of the district the question of the issuing of bonds for the amount so estimated. Notices of the election required herein shall be given in the manner provided by law for school elections.

May issue bonds.

Notice of election.

HISTORY.—R. S. § 3901; 70 v. 241, § 61; 91 v. 41; 94 v. 38; 97 v. 357; 102 v. 419.

Section 7625, General Code, vests in a board of education authority to determine the needs of the school district for the proper accommodation of its schools.

A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board, upon any question it is authorized by law to determine.

A court will not restrain a board of education from carrying into effect its determination of any question within its discretion, except for the abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority. *Brannon vs. Board of Education, 99 O. S., 369.*

As to effect of erroneous estimate as to cost of constructing a school building, see *McAlexander vs. Haviland Village School District, 7 O. N. P. (N. S.), 590.*

Proceedings of a school board providing for the issue of bonds are invalid, where the action pertaining thereto was taken at a special meeting of the board from which one member was absent, and no written notice of the meeting has been served on each member of the board either personally or at his residence or at his usual place of business, as required by section 4751, General Code. *Kattman vs. Board of Education, 15 O. C. C. (N. S.), 232.*



Where the electors of a school district have voted to issue bonds as provided by section 7625 et seq. of the General Code, in order to make the levy to pay for such bonds, as authorized in Senate Bill 160 (section 5649-3a), it is not necessary to submit the question to the voters again in order to take advantage of the new levy provided for in Senate Bill 160. Op. Atty. Gen., No. 2291, Aug. 4, 1921.

The power to select school sites vested in a board of education will not be interfered with by the courts; and the selection of a particular site at the time a bond issue for a school building was submitted to popular vote does not limit the board's power to afterward select a different site for a centralized school building. State vs. Jefferson Township School District, 30 O. C. A., 365, 11 App., 146.

Under the provisions of section 7625 G. C. the board of education in its resolution must state the purpose for which a bond issue is to be submitted. The proceeds arising from such a bond issue must be expended strictly in accord with the provisions of such resolution.

Where the resolution provides that it is for the purpose of purchasing land to erect a school building, it cannot be construed to authorize the purchase of two sites and the erection of two school buildings.

Where the resolution makes no mention of repairing or building an addition to an existing schoolhouse, moneys arising from such bond issue cannot properly be used for said purpose. Op. Atty. Gen. No. 1998, April 13, 1921.

Where a board of education by resolution under this section submits to the electors of the school district the proposition of a bond issue in a stated amount for the purpose of erecting a school building, and as a part of the same proposition there is also submitted to the electors the question of issuing bonds in a stated amount for the purchase of motor trucks and school wagons, the whole of said bond issue is invalid. This for the reason that there is no authority in said statute for submitting to the electors the question of a bond issue for the purpose of purchasing said motor trucks and school wagons, and the electors by said submission had no opportunity of voting separately on the question of issuing bonds for the purpose of erecting the school building. Allaird vs. Board of Education, 101 O. S., 469.

Mandamus is a writ commanding a public board or official to perform an act which the law specifically enjoins as a duty resulting from an office, trust or station, and will issue only when it is clearly shown that there is a plain dereliction of such duty.

Boards of education are by the provisions of Section 7625, General Code, vested with authority to determine the needs of school districts for the proper accomodation of the schools, and the approval by the electors at an election called for that purpose of a bond issue to raise funds for the erection of a schoolhouse does not withdraw from the board the discretion and authority conferred upon it by law, nor require the board to proceed with the erection of a particular school building.

104 O. S.—(Decided March 14, 1922. State, ex rel V. Board of Education.

Held that a special election upon the question of the issue of bonds for school purposes is to be considered a school election under Section 5120 G. C., and that returns of such election should be made to the clerk of the board of education of the school district and that such board is the authority that shall first canvass said returns. Op. Atty. Gen. (1911), p. 507.

When the electors of a school district have voted favorably upon the necessity of erecting a high school and have authorized an issue of bonds therefor, there is no statutory limit as to the time when the board shall issue the bonds. The fact of the necessity which exists, however, and its recognition by the voters imposes upon the board the obligation to proceed within a reasonable time. Op. Atty. Gen. (1911), p. 527.

Where by popular vote the electors of a school district have authorized the centralization of schools, but have later by popular vote denied a proposition for the issue of bonds for the erection of a building necessary for the purpose of such centralization, the centralization is not deemed complete and the board of education may adhere to the old district school arrangement until the electors authorize the issue of bonds for the construction of the necessary building for the purpose of effecting centralization. Op. Atty. Gen. (1911), p. 1145.

The intention of Section 7625 G. C., as clearly expressed therein, comprises within its terms the authority to call for an election upon the question of issuing bonds for the erection of a school house, as well as for the purpose of securing a site for such school building. Op. Atty. Gen. (1911), p. 510.

The statutes do not require or authorize publication of a resolution of a board of education passed for the purpose of submitting to electors the question of issuing bonds for the construction of a school building.

Under Section 7625 G. C., however, notices of the election shall be given in the manner provided by law for school elections, i. e., under Section 4839 G. C., such publication may be made by posting written or printed notices in five public places in the district at least ten days before the holding of the election, or it may be published in a newspaper of general circulation in the district, once at least ten days before holding of the election. Op. Atty. Gen. (1913), p. 1515.

A proposition for the centralization of schools under the provisions of Section 4726 G. C., and a proposition to issue bonds under the authority of Section 7625 G. C., may be submitted as separate propositions to the electors of a rural school district at the same election. Op. Atty. Gen. (1915), p. 67.

Held that tax limitations do not operate as debt limitations when a board of education under Section 7625 G. C. merely determines to submit the question of the issue of bonds in a given amount to a vote of the electors of the school district. Such limitations, however, apply when, after a favorable vote, the board proceeds to issue the bonds, and will prevent their issuance unless within the period for which the bonds are to run sufficient interest and sinking fund levies can be made within the tax limitations. However, in such case the principles have but a limited application because of the fact that the bonds are issued by a vote of the people and because of the provisions of Section 5649-1 G. C., as amended in 104 O. L., 12. Op. Atty. Gen. (1915), p. 486.

Where the electors of a school district vote in favor of a bond issue under authority of Section 7625 G. C., for the purposes therein mentioned and said bonds are issued, and thereafter territory is transferred by the county board of education to said school district from another school district said territory will be liable for its share of the bonded indebtedness so created. Op. Atty. Gen. (1915), p. 1970; Op. Atty. Gen. (1915), p. 2458.

The question of issuing bonds for the purpose of purchasing a site and erecting a high school building as authorized by Section 7669 G. C., may be submitted at a special election called for that purpose or at a regular or general election.

When the question of issuing bonds is submitted pursuant to Sections 7669 and 7625 G. C., it is not required that in addition thereto there shall be submitted the question of levying an additional tax for high school purposes, pursuant to Sections 5649-5 and 5649-5a, G. C.

Bonds authorized by Section 7669, G. C., to be issued for the purpose of purchasing a site and erecting a high school building, must be issued by each district separately and issue must be approved by a majority of the electors voting thereon in each district in which the question is submitted.

The levy for interest and sinking fund must be in proportion to the amount of bonds issued in each of the several united districts. Op. Atty. Gen. (1916), p. 1100.

Bonds may not be issued for the purposes mentioned in Section 7630-1 G. C., except upon the approval of the electors of the school district in the manner provided by Sections 7625 and 7626 G. C.

Bonds may not be issued for the purposes therein mentioned pursuant to Section 7630-1 G. C., if it is practicable to secure the necessary funds for such purposes, pursuant to Section 7625 G. C. et seq., and within the fifteen mill limitation of Section 5649-5b, G. C., 103 O. L., 57. Op. Atty. Gen. (1916), p. 1654.

Where the board of education of a school district, acting under Section 7625 et seq., G. C. and pursuant to the authority resulting from the favorable vote of the qualified electors of such district held at the August primary, issues bonds for the construction of a school building and having complied with the requirements of Section II of Article XII of the Constitution, as well as of Section 7628 G. C., certifies to the county budget commission a tax levy for interest and sinking fund purposes incident to said bond issue, and it appears that the combined rate for all purposes of said district, including the levy in question, does not exceed the fifteen mill limitation prescribed by Section 5649-5b G. C., 103 O. L., 57, said budget commission may certify said levy to the auditor of the county in which such school district is located and it will then be the duty of said auditor to determine the rate of tax necessary to produce the amount needed for said interest and sinking fund and place the same on the duplicate of said school district for the year in which said levy is made. Op. Atty. Gen. (1916), p. 1699.

In issuing bonds under the provisions of Sections 7625 to 7628 G. C., inclusive, the provisions of Section 7629 G. C. do not apply and a majority of the board of education may pass the resolution therefore as provided in Section 7626 G. C. Op. Atty. Gen. (1917), p. 835.

Bonds of school districts may not be voted and issued under Section 7625 of the General Code for the purpose of raising additional money for current expenses in conducting the schools. Op. Atty. Gen. (1917), p. 82.

Proceedings by a board of education of a school district to issue bonds under the provisions of Section 7630-1 G. C., for the purpose of installing an improvement in a school building ordered by the department of work shops and factories of the industrial commission of Ohio, must conform to the provisions of Section 7625 G. C.; and before the question of a bond issue for said purpose is submitted to the electors of the school district the board of education must affirmatively find that the funds at its disposal or that can be raised under the provisions of Sections 7629 and 7630 G. C., are insufficient for the purpose. Op. Atty. Gen. (1917), p. 90.

A village school district and a township rural school district uniting for high school purposes under Section 7669 G. C., may each issue bonds under said section on a vote of the electors of the respective school districts in the manner provided by Sections 7625, 7626 and 7627 of the General Code for the purpose of erecting a high school building for the joint high school district. Such separate issue of bonds by a vote of such school districts so uniting for high school purposes will be in compliance with the provisions of said Section 7669 G. C. Op. Atty. Gen. (1917), p. 247.

A board of education has no authority under Section 7625, 7626 and 7627 G. C., to issue bonds for the purpose of purchasing automobile trucks with which to transport pupils of the school district, and when such purpose is included within the purpose of a bond issue by the board of education under said sections of the General Code, such issue of bonds is invalid. Op. Atty. Gen. (1917), p. 1261.

Unless a proposed issue of bonds by the board of education of a school district for any one or more of the purposes mentioned in Section 7625 G. C., is to provide for an emergency under the terms of Section 7630-1 G. C., such board of education is not authorized to submit the question of such bond issue to a vote of



the electors of the school district, unless in its resolution providing for the submission of such question, or in other appropriate legislation it first determines that the funds at its disposal or that can be raised by a bond issue without a vote of the electors under Section 7625 are not sufficient for the purpose. Op. Atty. Gen. (1918), p. 1526.

A board of education has no authority to issue bonds under this section for the purpose of purchasing wagons for the transportation of pupils. Op. Atty. Gen. (1918), p. 1056.

A determination "that for the proper accommodation of the schools of the district it is necessary to purchase a site and to erect a school house," etc., is a jurisdictional prerequisite to the valid issuance of the bonds under Section 7625, G. C., et seq., for such purposes.

The jurisdictional findings and determinations required to be made under Section 7625, if not incorporated in the resolution submitting the question of the issue of such bonds to the electors, cannot be supplied by later correction of the minutes of the meeting at which the same is adopted after the election has been held. Op. Atty. Gen. (1919), p. 638.

A board of education which has issued bonds under Section 7630-1 and Section 7625 of the General Code and finds that the amount of the bond issue will not be sufficient to construct a school house which is necessary for the proper accommodation of the schools of the district, may, by again complying with these sections, issue additional bonds in an amount sufficient to produce the required aggregate sum necessary to construct such building. Op. Atty. Gen. (1919), p. 816.

The question of centralization of schools and the issue of bonds to the furtherance of the scheme of centralization, cannot be submitted at the same time to the qualified electors of the school district under Section 4726-1 G. C. Op. Atty. Gen. (1919), p. 952.

There is no provision of law other than Section 7626 et seq. G. C., whereby boards of education authorized by vote under Section 4726 G. C., to centralize schools, may borrow money with which to erect a centralized school building. Op. Atty. Gen. (1914), p. 607.

Boards of education are without authority to expend public funds in printing and mailing to each taxpayer literature and advertising matter in favor of any proposition to be voted on by the electors at an election called by such board of education. Op. Atty. Gen. (1920), p. 915.

See opinions of Attorney General, No. 2985 (1922), cited under Sec. 7630-1.

SECTION 7626. If a majority of the electors, voting on the proposition to issue bonds, vote in favor thereof, the board thereby shall be authorized to issue bonds for the amount indicated by the vote. The issue and sale thereof shall be provided for by a resolution fixing the amount of each bond, the length of time they shall run, the rate of interest they shall bear, and the time of sale. Such bonds shall be sold in the manner provided by law.

Issue of  
bonds when  
proposition  
approved.

HISTORY.—R. S. § 3992; 70 v. 195, § 62; 97 v. 357; 106 v. 492 (495).  
As to sale of public bonds, see G. C. §§ 2294 and 2295.

It is necessary to advertise the sale of bonds by a board of education under Section 7626 G. C., and a board of education is not authorized to dispense with competitive bidding in the sale of the same.

A board of education which has advertised the sale of bonds bearing a certain rate of interest, and has received no bids for the same, and which then proceeds by resolution to raise the rate of interest on said bonds, must again offer said bonds to the board of commissioners of the sinking fund of the school district, if such

there be, and then to the industrial commission of Ohio prior to again advertising the same for sale. Op. Atty. Gen. (1915), p. 133.

In issuing bonds under the provisions of Section 7625 to Section 7628 G. C., inclusive, the provisions of Section 7629 G. C., do not apply, and a majority of the board of education may pass the resolution provided for in Section 7626 G. C. Op. Atty. Gen. (1917), p. 835.

Requisites of  
bonds.

SECTION 7627. Such bonds shall bear a rate of interest not to exceed six per cent per annum payable semi-annually, be made payable within at least forty years from the date thereof, be numbered consecutively, made payable to the bearer, and be signed by the president and clerk of the board of education. The clerk of the board must keep a record of the number, date, amount and the rate of interest of each bond sold, the amount received for it, the name of the person to whom sold, and the time when payable, which record shall be open to the inspection of the public at all reasonable times. Bonds so issued shall in no case be sold for less than their par value and accrued interest.

HISTORY.—R. S. § 3992; 70 v. 195, § 62; 97 v. 357; 106 v. 492 (495).

Where a second issue of bonds is authorized the date of maturity may be fixed later than the date of maturity of the first issue, the only limitation of law under G. C., Sec. 7627 is that they be made payable within at least forty years from their date. Op. Atty. Gen., (1920), p. 681.

Tax levy to  
pay bonds  
thus issued.

SECTION 7628. When an issue of bonds has been provided for under the next three preceding sections, the board of education, annually, shall certify to the county auditor or auditors as the case may require, a tax levy sufficient to pay such bonded indebtedness as it falls due together with accrued interest thereon. Such county auditor or auditors must place such levy on the tax duplicate. It shall be collected and paid to the board of education as other taxes are. Such tax levy shall be in addition to the maximum levy for school purposes, and must be kept in a separate fund and applied only to the payment of the bonds and interest for which it was levied.

HISTORY.—R. S. § 3993; 70 v. 195, § 63; 97 v. 358.

When a joint school district is formed for high school purposes by a township school district and an adjoining village school district such district becomes one district and taxes for the support of the same must be borne by the respective joined districts in proportion to the total valuation of the property in each, not withstanding the fact that the village school district sends the most pupils and has the smallest valuation. Op. Atty. Gen. (1911), p. 1042.

Where the board of education of a school district acting under Section 7625 et seq. G. C., and pursuant to the authority resulting from the favorable vote of the qualified electors of such district held at the August primary, issues bonds for the construction of a school building, and having complied with the requirement of Section II of Article XII of the Constitution as well as Section 7628 G. C., certifies to the county budget commission a tax levy for interest and sinking fund purposes incident to said bond issue, and it appears that the combined rate for all purposes of said district, including the levy in question, does not exceed the fifteen mill

limitation prescribed by Section 5649-5b G. C., 103 O. L., 57, said budget commission may certify said levy to the auditor of the county in which such school district is located and it will then be the duty of said auditor to determine the rate of tax necessary to produce the amount needed for said interest and sinking fund and place the same on the duplicate of said school district for the year in which said levy is made. Op. Atty. Gen. (1916), p. 1699.

SECTION 7629. The board of education of any school district may issue bonds to obtain or improve public school property, and in anticipation of income from taxes, for such purposes, levied or to be levied, from time to time, as occasion requires, may issue and sell bonds, under the restrictions and bearing a rate of interest specified in sections seventy-six hundred and twenty-six and seventy-six hundred and twenty-seven. The board shall pay such bonds and the interest thereon when due, but provide that no greater amount of bonds be issued in any year than would equal the aggregate of a tax at the rate of two mills, for the year next preceding such issue. The order to issue bonds shall be made only at a regular meeting of the board and by a vote of two-thirds of its full membership, taken by yeas and nays and entered upon its journal.

Issue of bonds  
by boards of  
education.

HISTORY.—R. S. § 3994; 75 v. 526, § 56; 89 v. 257; 95 v. 530; 97 v. 358; 109 v. 252.

Section 7629 G. C. empowers the board of education of a school district to issue, without a vote of the electors, such an amount of bonds in any one year as does not exceed in the aggregate a tax of two mills for the year next preceding the issue. The limitation of the Smith one per cent. law must be observed, however. Op. Atty. Gen. (1911), p. 1332.

Held that where a board of education has twice submitted the proposition of the issue of bonds of the school district under Section 7625 G. C., and such proposition has in both instances been defeated, recourse could not be had to Section 7629 G. C., for the same purpose and that the board is without remedy. Op. Atty. Gen. (1912), p. 1200.

Where a board of education in a school district submits the question of a bond issue to a vote of the electors of the school district under authority of and in compliance with the requirements of Section 7625 et seq. of the General Code, for any of the purposes mentioned therein, said board by submitting said bond issue for an amount of money the board estimates to be sufficient for the purpose, exhausts its authority for this particular purpose and cannot provide an additional sum for the same purpose under the authority of Section 7629 G. C. Op. Atty. Gen. (1915), p. 536.

The last two opinions above noted were later disapproved and overruled by the opinion of the Attorney General, (1918), p. 175.

In order to obtain or improve school property a board of education may without a vote of the electors issue and sell bonds. No greater amount of bonds can be issued in any one year than would equal the aggregate of a tax at the rate of two mills for the year next preceding such issue. The resolution to issue such bonds can be made at a regular meeting of the board and by a two-thirds vote of the full membership of the board. Op. Atty. Gen. (1913), p. 1317.

A levy of taxes made by a board of education for the purpose of providing for the payment of bonds issued in anticipation thereof under authority of Section 7629 G. C., must be made within the ten mill aggregate limitation of the Smith one per cent. law and also within the five mill limitation applicable to boards of education as such, and prescribed by Section 5649-3a G. C., 102 O. L., 266. Op. Atty. Gen. (1913), p. 1381.



Held on a consideration of the case of *Rabe vs. Board of Education*, 88 O. S., 403, that Section 7629 G. C., providing for the issue of bonds by boards of education, is still in effect, but that tax levies to pay the interest on such bonds and create a sinking fund for their payment at maturity are subject to the exterior limitation of ten mills and the interior limitation of five mills prescribed by the Smith one per cent law. Op. Atty. Gen. (1914), p. 1078.

Section 7629 G. C., was not repealed by implication by the enactment of Sections 5649-2 to 5649-5b G. C., and the board of education of the school district may issue bonds under authority of Section 7629 G. C. for the purpose therein set forth, subject to the limitations provided in said section and subject also to the limitations as to tax levies provided by sections 5649-2 and 5649-5b G. C. Op. Atty. Gen. (1915), p. 1640.

The proceeds of bonds issued by the board of education of a school district for the purpose of purchasing a site whereon to erect a high school building and for the construction of such building, may not be issued by said board for the erection of a grade school building. Op. Atty. Gen. (1916), p. 1778.

The words "in any one year" in Section 7629 G. C., means in any one school year which means on September 1 of any calendar year and ending on August 31 of the succeeding calendar year. Op. Atty. Gen. (1917), p. 1718.

Where the state superintendent of plumbing makes an order that certain repairs shall be made in a school building, and there is no money in the hands of the board with which to make said repairs, funds may be raised under the provisions of Section 7629 G. C. Op. Atty. Gen. (1917), p. 1758.

The authority of a board of education of a school district to issue bonds under the provision of Section 7629 G. C., for the purpose of improving public school property is limited to the issue of bonds for specific improvements determined by the board of education at the time the issue of the bonds is provided for; and the resolution of the board of education providing for such bond issue should indicate the fact that said bonds are issued for such specific improvements. Op. Atty. Gen. (1918), p. 82.

Bonds cannot be sold under the provisions of Section 7629 G. C. to pay the rent of school buildings. Op. Atty. Gen. (1918), p. 1440.

The amount of bonds that a board of education of a school district may issue in any current school year under Section 7629 G. C. for the purpose of obtaining or improving school property is limited to a tax at the rate of two mills upon the tax duplicate valuation upon which the school taxes of the district for the previous school year were extended and collected; and therefore, an issue of bonds provided for by a resolution of the board of education of the school district under said section under date of February 23, 1918, is limited to the amount produced by a tax at the rate of two mills on the tax duplicate valuation of the taxable real and personal property of the school district for the year, 1916, Op. Atty. Gen. (1918), p. 646.

A board of education cannot legally issue bonds under the provisions of sections 7629 and 7630 G. C. (109 O. L., 252) for the purpose of obtaining motor trucks to transport pupils to school.

Where bonds are issued under the provisions of section 7629 G. C. for the purposes mentioned therein, no vote of the people is necessary. Op. Atty. Gen. No. 3273, June 27, 1922.

See opinions of Attorney General, No. 2985 (1922), cited under Sec. 7630-1.

Limitation of  
issue, tax  
levy.

SECTION 7630. In no case shall a board of education issue bonds under the provisions of the next preceding section in a greater amount than can be provided for and paid with the tax levy authorized by law and subject to limitations on the combined maximum rate for all taxes in force

at the date of issue. The board shall provide, subject to said limitations, for the levy of a sufficient tax for interest and sinking fund or retirement purposes in the resolution authorizing the issue. The amount of such bonds outstanding at any time shall not exceed one and one-half per cent of the tax duplicate of the district.

All bonds heretofore issued or authorized to be issued by any board of education under authority of next preceding section, for a lawful purpose, which have been or shall be sold for not less than par and accrued interest and the proceeds thereof have been or shall be paid into the treasury, shall be held to be legal, valid and binding obligations of the school district and the board of education thereof.

Prior issues  
valid.

HISTORY.—R. S. § 3994; 75 v. 526, § 56; 89 v. 257; 95 v. 530; 97 v. 358; 109 v. 252.

Held notwithstanding the fact that Section 7630 G. C., was repealed by implication by the enactment of the provisions of the Smith one per cent. law, that Section 7629 G. C. still authorizes the issue of school bonds for purposes subject to the pertinent provisions of the Smith one per cent. law with respect to tax levies to pay the interest on such bonds and provide a sinking fund for their payment at maturity. Op. Atty. Gen. (1916), p. 1285; Op. Atty. Gen. (1917), p. 1758.

SECTION 7630-1. If a schoolhouse is wholly or partly destroyed by fire or other casualty, or if the use of any school house or school houses for their intended purpose is prohibited by an order of the Industrial Commission of Ohio or its successor in such authority, and the board of education of the school district is without sufficient funds applicable to the purpose, with which to rebuild or repair such school house or to construct a new school house for the proper accomodation of the schools of the district, and it is not practicable to secure such funds under any of the six preceding sections because of the limits of taxation applicable to such school district, such board of education may issue bonds for the amount required for such purpose. For the payment of the principal and interest on such bonds and on bonds heretofore issued for the purpose herein mentioned and to provide a sinking fund for their final redemption at maturity, such board of education shall annually levy a tax as provided by law.

Replacement  
of schoolhouse  
destroyed or  
condemned.

HISTORY.—103 v. 527; 109 v. 343. The statute of which this section is a part was declared by the legislature to be an emergency measure. See 103 v. 527 (528), § 3.

This section was held to be still in force and effect as against the contention that the same had been repealed by implication by the act of the legislature abolishing the department of workshops and factories, and transferring its functions to the state industrial commission. *Kinsinger vs. Board of Education*, 101 O. S., 298.

There is no limit as to the amount of bonds that may be issued by a board of education under section 7630-1 G. C. but such section cannot be used by a board of education unless it is not practicable to secure the necessary funds under sections 7625, 7626, 7627, 7628, 7629 and 7630, and a board of education in operating under section 7630-1 G. C. should use discretion and good judgment that the bond issue under such section be protected by a sufficient tax duplicate.

Where a board of education has issued bonds under section 7625 to build a school house and the funds derived therefrom were not sufficient to build the same, leaving the building unfinished, and in the meantime an order has been placed against the old school building in the district by the Industrial Commission, forbidding its use for school purposes, such district may issue bonds under section 7630-1 G. S. if it is not practicable to issue further bonds under sections 7625, 7626, 7627, 7628, 7629 and 7630 G. C. to complete such school building. Op. Atty. Gen. No. 2985, Apr. 13, 1922.

Under the provisions of amended section 7630-1 (109 O. L., p. 336) a board of education may issue bonds without a vote of the people upon the same for the purpose of rebuilding or repairing a school house or constructing a new school house, where the school house formerly used was destroyed by fire or other casualty, or if the use of the same for its intended purpose was prohibited by an order of the Industrial Commission, but before a board of education can avail itself of the provisions of section 7630-1 it must appear that it is not practicable to secure the necessary funds under sections 7625, 7626, 7627, 7628, 7629 and 7630.

Under the provisions of section 5649-4 G. C., a board of education issuing bonds under the provisions of section 7630-1 G. C. may levy a tax sufficient to provide therefor, irrespective of any limitations. Op. Atty. Gen. No. 2902, Feb. 25, 1922.

Where the industrial commission and its deputy in charge of the department of work shops, factories and public buildings condemned the use of a public school building for school purposes, the order must be complied with and an emergency is created. If bonds are issued by the board of education with the approval of the majority of the electors at a special election the tax levy necessary to carry these bonds may be made outside of the limitations of the Smith one per cent. law. Such is the effect of the amendment to Section 5649-4 G. C. Op. Atty. Gen. (1913), p. 1715.

Under Section, 7630-1 of the General Code a school building condemned by the chief inspector of work shops and factories may be rebuilt or repaired. The money may be borrowed therefor, by an issue of bonds regardless of the Smith one per cent. law limitation. Op. Atty. Gen. (1913), p. 14.

Where the inspector of work shops and factories prohibits the use of a school house until certain repairs are made, but the board of education decides to erect a new school building instead and the electors vote for a \$25,000 bond issue for the construction thereof, but cannot levy sufficient taxes to pay bonds and maintain the schools there would be an emergency within the meaning of Section 5649-4 G. C., and the necessary taxes for the retirement of bonds required for the purpose may be levied outside of all limitations of law. Op. Atty. Gen. (1914), p. 548.

In the absence of a showing of gross abuse of discretion on the part of the school board, in determining to acquire a new site and erect new buildings rather than to repair and re-equip the old buildings condemned by the Industrial Commission, a court is without authority to interfere. *Kinsinger et al vs. Board of Education*, 22 O. N. P. (N. S.), 241.

If a board of education deems it necessary to secure a new site in order to replace a school house condemned or destroyed, the tax levies necessary for the purchase of such site are not within the exemption of Sections 7630-1 and 7630-2 G. C., but must be made within the appropriate limitations of the Smith one per cent. law. Op. Atty. Gen. (1914), p. 1128.

For the purpose of repairing or erecting school buildings in compliance with orders of the chief inspector of work shops and factories, or when rendered necessary by destruction of buildings by fire or other casualty, a board of education may issue and sell bonds under the provisions of Section 7629 G. C., without a vote of the electors; the tax levy therefor being within the five mill and ten mill limitations of the Smith law.



If the funds at its disposal, or that can be raised under Section 7629 G. C., would not be sufficient, the board may submit the proposition to the electors in conformity with the provisions of Sections 7625 et seq., G. C., the tax levy for such bonds and interest being outside of the five and ten mill limitations, but within the fifteen mill limitation of the Smith law.

Upon determination that sufficient money cannot be raised within the limitations applicable to each of the foregoing methods, the board may submit the proposition to issue bonds pursuant to the provisions of Sections 7630-1 and 5649-4 G. C., to which latter procedure none of the limitations on taxation is applicable. Op. Atty. Gen. (1915), p. 544. Op. Atty. Gen. (1915), p. 1263.

Bonds may not be issued for the purposes therein mentioned pursuant to Section 7630-1 G. C., if it is practicable to secure necessary funds for such purposes, pursuant to Section 7625 G. C., et seq., and within the fifteen mill limitation of Section 5649-5b G. C., 103 O. L., 57. Op. Atty. Gen. (1916), p. 1654.

Although under the provisions of Section 7630-1 and Section 5649-4 G. C., a board of education is not authorized to levy taxes outside of the limitations of the Smith one per cent. law for the purpose of paying the principal and interest on bonds issued on a vote of the electors for the purpose of constructing a school building, the construction of which is made necessary by the emergency mentioned in Section 7630-1 G. C., unless it is not practicable to secure the funds necessary for the construction of such building under the provisions of Sections 7625 to 7630, inclusive, G. C., the right of the board of education to make such levies outside of the limitation of the Smith one per cent. law should not be denied where the legislation of the board of education with respect to such bond issue shows a bona fide attempt on the part of the board of education to bring the proceedings within the authority of said Sections 7630-1 and 5649-4; and it further appears as a matter of fact that said board of education cannot meet such bonds and the interest thereon by levies within the limitations of the Smith one per cent. law. Op. Atty. Gen. (1917), p. 1439.

Where two school buildings have been condemned by the chief deputy of the department of inspection, division of work shops, factories and public buildings, and the board of education determines to build a new school building instead of one of those condemned, and enlarges the other one, and money cannot be raised under Sections 7625 to 7629, inclusive, G. C., because of the limitations of taxation, such an emergency exists as will permit the levy to be made under Section 5649-4 G. C., outside of the limitations of the Smith law. Op. Atty. Gen. (1917), p. 2355.

Bonds may not be lawfully authorized under Section 7630-1 of the General Code for the purpose of making improvements on school property rendered necessary by the order of the state plumbing inspector. Op. Atty. Gen. (1918), p. 873.

The board of education which has issued bonds under Sections 7630-1 and 7625 of the General Code, and finds that the amount of the bond issue will not be sufficient to construct a school house which is necessary for the proper accommodation of the schools of the district, may, by complying again with these sections, issue additional bonds in an amount sufficient to produce the required aggregate sum necessary to construct such building. Op. Atty. Gen. (1919), p. 816.

Where a board of education acting under Section 7620 G. C. rents or leases rooms for temporary school purposes, such rooms do not constitute a school building within the meaning of Section 7630-1 G. C. Op. Atty. Gen. (1919), p. 871.

Where a single order of the department of inspection relates to the making of what constitute repairs and the installation of what constitute mere furnishings, bonds may be issued for the securing of the funds necessary to make the repairs or rebuilding under G. C. 7630-1 and if it is necessary to issue bonds for the purpose of procuring the furnishings and installing them, such

action should be separately taken under G. C. Sec. 7625. Op. Atty. Gen., (1920), p. 826.

Under G. C. 7630-1, mere equipment or furnishings for a school house, made necessary by the order of the department of inspection of public buildings in the industrial commission, cannot be made the basis of the issuance of bonds, the sinking fund levies on account of which may be exempted from all limitations, but installation of such equipment as a heating system, a sanitary system, the removal of floor registers, new hardware on doors, provisions for cloak room and provision for additional means of egress, involving as they do fundamental alterations of the building itself, are not to be classed as mere furnishings but as repairs and rebuilding within the meaning of the section cited. Op. Atty. Gen. (1920), p. 826.

Section 7630-1, General Code, authorizes the board of education of a district, when such conditions exist in the district as to bring it within the purview of that section, upon the approval of the electors to issue bonds for the purpose of, (1) rebuilding a building destroyed or prohibited, (2) repairing a decayed, injured, dilapidated, partially destroyed or prohibited building, or, (3) constructing a new building to accommodate the pupils of the entire district; and a board of education is authorized to issue the bonds in such an amount as will be required for either one or both of the first two alternatives, or in such an amount as will be required for the last alternative. *County Board of Education v. Moorehead* 104 O. S.—Decided May 31, 1922.

(The above decision, insofar as it relates to the "approval of the electors" no longer applies in view of the amendment of Sec. 7630-1 made in 1921.—Ed.)

See opinions of Attorney General (1914), p. 548, cited under Sec. 1032.

Maximum  
net indebted-  
ness in school  
district 6%.

SECTION 7630-2. The net indebtedness created or incurred by any school district shall never exceed six per cent of the total value of all property in such school district as listed and assessed for taxation; provided, however, that in the case of any school district whose net indebtedness at the time of the passage of this act exceeds said six per cent, such school district may, in addition to said six per cent, issue bonds under the authority of section 7625 General Code not exceeding in the aggregate an amount equal to one per cent of the total value of all property in such school district as levied and assessed for taxation and bonds under the authority of section 7629 of the General Code not exceeding one-half of one percent of said total value. "Net indebtedness" for school districts shall be defined as provided in section 3949, General Code, for municipalities. Bonds issued under the authority of section 7630-1 of the General Code for the replacement of condemned or destroyed schoolhouses as well as all classes of bonds which are in said section 3949 excluded from the calculation of the net indebtedness of municipalities shall, insofar as applicable to school districts, be likewise excluded from the calculation of the net indebtedness of school districts.

Net indebted-  
ness defined.

HISTORY.—109 v. 343.

Establishment  
of free public  
library.

SECTION 7631. The board of education of any city, village, or rural school district, by resolution, may provide for the establishment, control and maintenance, in such district, of a public library, free to all the inhabitants thereof.

For that purpose, by purchase, it may acquire the necessary real property, and erect thereon a library building; acquire, by purchase or otherwise, from any other library association, its library property; receive donations and bequests of money or property for such library purposes, and maintain and support libraries now in existence and controlled by the board.

[Contract  
with library  
corporation.]

HISTORY.—R. S. § 3998-1; 96 v. 8; 98 v. 244, § 1; 104 v. 225 (228).

The library fund of a school district follows the school funds of such district with respect to a deposit of the same. Op. Atty. Gen. (1915), p. 2309.

A board of library trustees of a village school district, appointed and created under the provisions of sections 7631 and 7636 G. C., is unaffected by the change of the village school district to the city district upon the transition of a village to a city, and the members of such a board may lawfully continue to serve as trustees until the expiration of the respective terms of their appointment. Op. Atty. Gen. No. 3016, Apr. 21, 1922.

SECTION 7632. Such board of education annually may make a levy upon the taxable property of such school district, in addition to all other taxes allowed by law, of not to exceed one mill for a library fund, to be expended by the board, for the establishment, support and maintenance of such public library.

Taxation.

HISTORY.—R. S. § 3998-1; 96 v. 8; 98 v. 244, § 1.

SECTION 7633. But when a donation or bequest of money or property has been or is made to two or more school districts jointly, or jointly and severally for the purpose of establishing and maintaining such public library and the money so donated has been or may be expended in the purchase of a site or the erection of a library building thereon or both, the provisions of this subdivision shall apply. In such case the board of education of each of the districts annually may levy not exceeding one mill, in addition to all other taxes allowed by law, upon the taxable property of such school districts for the establishment, support and maintenance of such public library, and such library building may be located at a convenient place in either district.

Libraries  
jointly owned  
by two or  
more school  
districts; tax  
levy.

HISTORY.—R. S. § 3998-1; 96 v. 8; 98 v. 244, § 1; 107 v. 179.

SECTION 7634. The control of such building and library and the expenditure of all moneys for the purchase of books and other purposes and the administration of the library shall be vested in a board of six trustees, three to be appointed by each of the boards of education for the term of five years. They must serve without compensation, and until their successors are appointed. In case of vacancy in the board, from refusal to serve, resignation or otherwise, it shall be filled by the boards of education of such district, for the unexpired term.

Board of  
trustees, ap-  
pointment,  
term.

HISTORY.—R. S. § 3998-1; 96 v. 8; 98 v. 244, § 1.



Management  
and control  
of library.

SECTION 7635. The board of education may provide for the management and control of such library by a board of trustees to be elected by it as herein provided.

HISTORY.—R. S. § 3998-2; 96 v. 8; 100 v. 16.

A school district having a library building under control and management of a board of library trustees as provided in Sections 7635 G. C. et seq., when such school district includes territory outside of the limits of the city or village where such library building is situated, said board of library trustees is required to pay for water furnished the library by the municipal water system at the rate charged for school buildings under Section 3963 G. C.; and said library building is a building used in the educational activities of the district as an adjunct to the public school system. Op. Atty. Gen. No. 1840, Feb. 5, 1921.

Library trustees,  
number  
and eligi-  
bility of.

SECTION 7636. Such board of library trustees shall consist of seven members, who must be residents of the school district. No one shall be eligible to membership on such library board who is or has been for a year previous to his election, a member or officer of the board of education. The term of office shall be seven years, except that at the first election the terms must be such that one member retires each year. Should a vacancy occur in the board, it shall be filled by the board of education for the unexpired term. The members of the library board must serve without compensation and until their successors are elected and qualified.

HISTORY.—R. S. § 3998-2; 96 v. 8; 100 v. 16.

Powers of  
board.

SECTION 7637. In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed.

HISTORY.—R. S. § 3998-2; 96 v. 8; 100 v. 16.

Powers of  
library  
board.

SECTION 7638. By a two-thirds vote of its members such library board may purchase or lease grounds and buildings, and erect buildings for library purposes. It also may appropriate land for library purposes if the owner and the board cannot agree upon terms, and dispose of land, when in its opinion, it is no longer needed for library purposes. Conveyances made by the board shall be executed in its name by its president and secretary. In the event any balance to the credit of the library fund shall remain in the treasury at the close of any fiscal year, such surplus or any part thereof may be set aside by a two-thirds vote of the members of the board as a special building and repair fund. It may accept any gift, devise or bequest for the benefit of such library. No member of the library board shall be interested, directly or indirectly, in any contract made by the board. It shall report annually in writing to the board of education.

Repair fund.

HISTORY.—R. S. § 3998-2; 96 v. 8; 101 v. 304.

A municipal corporation may transfer real or personal property, acquired or suitable for municipal purposes, to the trustees of a public library for the school district within which such municipality is situated for an adequate consideration, upon such lawful terms and conditions as are agreed to between the municipal corporation and the library trustees. *Cleveland vs. Library Board*, 94 O. S., 311.

SECTION 7639. Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided.

Tax levy for library purposes.

HISTORY.—R. S. § 3998-4; 96 v. 9, § 4; 101 v. 304; 109 v. 237.

A city board of education cannot legally transfer funds from its treasury to the library fund, notwithstanding the budget commission failed to certify to the county auditor the proper levy for library purposes. *Op. Atty. Gen.* (1920), p. 544.

The board of education is not required by section 7639 G. C. to make a tax levy sufficient to realize the amount of money certified to it by the board of library trustees, but it may in a proper case raise that amount by taxation if it can be done by a levy not exceeding one and one-half mills.

While the board of education may not arbitrarily refuse to levy a tax for library purposes when funds are needed, it has the power of finally deciding (1) the necessity for funds and (2) the amount that should be raised. And in making its decision the board should consider the certificate of the board of library trustees and treat it as making a *prima facie* case on both points.

The board of education, in the exercise of a sound discretion, may either increase or decrease the amount named in the certificate of the board of library trustees, if upon investigation it appears that such action is justified, subject, however, to the limitation that the tax levy to produce the amount shall not exceed one and one-half mills.

When the tax levy of the board of education for library purposes does not exceed one and one-half mills, the county budget commissioners have no authority to reduce it. *Op. Atty. Gen. No. 3047*, May 1, 1922.

SECTION 7640. The proceeds of such tax will constitute a fund to be known and designated as the library fund. Payments therefrom shall be made only upon the warrant of the library board of trustees, signed by the president and secretary thereof.

Payments from library fund.

HISTORY.—R. S. § 3998-4; 96 v. 9, § 4.

The fund designated as the library fund under section 7640 G. C. remains in the custody of the treasurer or depository of the board of education making the levy which creates said fund until it is expended by the board of library trustees. *Op. Atty. Gen.* (1916), p. 555.

SECTION 7640-I. That all funds belonging to boards of trustees of public libraries existing under sections 7635 to 7640 of the General Code, shall be deposited in the manner and with depositories selected by such boards of trustees

Deposits of funds; selection of depositories.

in the manner prescribed by sections 7604 to 7609, inclusive, of the General Code, for the selection of depositories and the deposit of funds of boards of education, and security therefor shall be given to boards of trustees of such libraries in the manner and the amount provided by said sections 7604 to 7609, inclusive, of the General Code.

HISTORY.—107 v. 604, § 1.

Tax levy to  
maintain pub-  
lic library.

SECTION 7641. The board of education in any city, village, or rural school district may contract annually with any library corporation or other organization owning and maintaining a library or with any board of trustees appointed by authority of law, having the management and control of a library, for the use of such library by the residents of such district. Such board of education shall require an annual report in writing from such library corporation or other organization or board of trustees.

HISTORY.—R. S. § 3998-5; 96 v. 9, § 5; 101 v. 298; 104 v. 225 (228).

A levy of one mill by the board of education imposed annually for the purpose of reimbursing a library association for services to the public in pursuance of a contract between the board and the association, is within the interior limitations of the Smith law and is not a levy for sinking fund and interest purposes necessary to provide for indebtedness created prior to the passage of the Smith law.

The obligation which rests upon the board is not an indebtedness within the meaning of the statute nor is there an "impairment of the obligation of contract" in the effect of the Smith law upon said procedures. Op. Atty. Gen. (1912), p. 1578.

School library  
may be pro-  
vided.

SECTION 7642. The board of education of any school district of the state, in which there is not a public library operated under public authority and free to all the residents of such district annually may appropriate not to exceed two hundred and fifty dollars from its contingent fund for the purchase of books, other than school books, for the use and improvement of the teachers and pupils of such school district. And whenever the board of education of such district receives donations or bequests for the purposes aforesaid the board of education shall appropriate from its tuition or contingent funds or both a like amount, but not to exceed one hundred dollars in any one year for any particular school in such district. The books so purchased shall constitute a school library, the control and management of which shall be vested in the board of education, which may receive donations and bequests of money or property therefor.

HISTORY.—R. S. § 3998-6; 96 v. 9, § 6; 108 v. Pt. I 613.

Museum.

SECTION 7643. The board of education of any school district, or board of trustees managing and controlling a library in any school district, may found and maintain a museum in connection with and as an adjunct to such library, and for such purpose may receive bequests and donations of money or other property.

HISTORY.—R. S. § 3998-7; 96 v. 9, § 7.



SECTION 7643-1. A county library district may be created in any county, composed of territory therein in which free library service is not furnished to all of its citizens, in the manner hereinafter provided. Upon the filing of a petition in the probate court of the county, signed by not less than twenty-five per cent of the electors residing in the territory comprising the proposed district, specifically describing the territory in such proposed district by metes and bounds and accompanied by a map or plat showing the boundaries thereof, or in case such proposed district is composed of entire townships, school districts, or municipalities, the proper name of each such subdivision, the probate judge shall fix a day for the hearing thereof not more than thirty days after the filing of such petition. If the probate judge finds the territory of such proposed district sufficiently described and the boundaries thereof accurately designated he shall certify such fact to the deputy state supervisors of elections of the county, who shall submit the question of the creation of such county library district to the electors residing in the territory comprising such proposed district and shall place the same on the ballot at the next regular or general election. If a majority of the electors voting upon such proposition vote in the affirmative, such district shall be deemed and held to have been created.

County library district; how created.

Submission of question.

HISTORY.—109 v. 351.

SECTION 7643-2. The management of the county library district service shall be vested in a board of five county library district trustees, two appointed by the common pleas judge or judges and three by the commissioners of the county; the two for one and four years respectively, and the three for two, three and five years respectively. Thereafter, all trustees shall be appointed for five year terms and vacancies for unexpired terms filled by the same appointing powers.

County library district trustees; appointment, term.

HISTORY.—109 v. 351.

SECTION 7643-3. Such board shall levy annually for district library purposes a tax on all the taxable property of the county library district of not less than two-tenths of a mill nor more than one mill.

Tax levy.

HISTORY.—109 v. 351.

SECTION 7643-4. Any subdivision of a county maintaining a free public library open to all the citizens within its limits may, by resolution adopted and entered upon the minutes of its board of trustees or other governing body and filed with the trustees of the county library district, become a part of a county library district and be subject to all the provisions of this act applying thereto; provided, that on petition of not less than fifty electors residing in such subdivision, filed with the deputy state supervisors of elections or deputy state supervisors and inspectors of elections, as the case may be, not less than sixty days before the next

Subdivision of county maintaining free public library may become part of district; procedure.

general election, the question of becoming a part of the county library district shall be submitted to the electors of such subdivision and if a majority of those voting thereon shall vote in the affirmative, such subdivision shall become a part of such county district.

HISTORY.—109 v. 351.

Contract with governing bodies of libraries for free use of, by district.

SECTION 7643-5. The county library district trustees may contract with the governing body or bodies of one or more libraries within the county, and such governing body or bodies shall have the power to enter into a contract for the free use of such library or libraries by the people of the county library district. If the county library district trustees contract for library service with more than one library, the county library district may be divided for such service. Such contract or contracts shall contain such provisions as shall best subserve the purpose of giving the people of the county library district the advantages of efficient library service. The county library district trustees of a county may contract to furnish library service to another county library district, or to other county library districts, and the trustees of such other county library district or districts shall have the power to enter into such contract. Contracts as provided in this section may be terminated by mutual agreement, or by either of the two contracting parties on giving six months' notice before the beginning of the next ensuing tax year, or by the failure of the county library district trustees to make the necessary levy.

HISTORY.—109 v. 352.

Powers and duties of trustees, expenses.

SECTION 7643-6. The county library district trustees shall serve without compensation, but their necessary expenses shall be allowed and paid out of the county district library fund. They shall have power to receive bequests or gifts of real or personal property, or of money; to purchase, lease or dispose of grounds and buildings; to construct buildings and to furnish, equip and maintain the same for library purposes. They shall render an efficient library service in their respective districts. They shall submit an annual report of service, statistics and finances to the county commissioners and the state director of library service in such form as shall be required by the latter. They shall draw up annually a budget, showing in detail the purposes for which it is proposed the money be expended during the succeeding year, and certify same to the budget commission, which amount shall be allowed by the budget commission in addition to all other levies, provided such amount shall be within the limits as set forth in section three.

HISTORY.—109 v. 352.

Deposit and use of moneys, fund.

SECTION 7643-7. All moneys realized from the levy made for the county library district under the provisions of this act, including interest on all library funds, and all moneys received or collected by said trustees for the library

district, shall be placed in the treasury of such county, subject to the order of such board of trustees of such library district. Such fund shall be known as the county library district fund of such county, of which the county treasurer shall be custodian; and no money shall be drawn therefrom, except upon the requisition of the board of trustees of such library district, certified by the president and secretary of such board, directed to the county auditor, who shall draw his warrant upon the county treasurer therefor. Any part of said funds unexpended during any year shall remain to the credit of such library district fund.

HISTORY.—109 v. 352.

SECTION 7643-8. The librarians of the two public libraries of largest circulation in the state, the director of state library service, and two persons representing rural library work and chosen by the state library commission shall constitute a state board of library examiners. The members chosen by the state library commission shall serve one for two and the other for four years, and their successors, appointed by the same authority, shall serve for a term of four years. Such boards shall examine applicants for the position of county district librarian. The members shall receive no compensation but their necessary expenses shall be paid from the appropriation for the state board of library commissioners on the warrant of that body. They may adopt rules and regulations for the government of the board and for carrying out the provisions of this section. No person who has not received a certificate of qualification from the state board of library examiners shall be employed as librarian in charge of any county library district. The county librarian and his assistants shall be appointed and their salaries fixed by the county library district trustees, and shall also be allowed necessary traveling expenses incurred on the business of the library within the county, upon approval of the county library district trustees, and in addition, the county librarian shall attend and take part in an annual state convention of county librarians, for which railroad expenses shall be allowed out of the county library district fund.

Board of library examiners; how composed; term of office; duties.

HISTORY.—109 v. 353.

SECTION 7643-9. The words "the beginning of the next ensuing tax year" shall mean the day upon which taxes upon real estate become a lien.

Definition.

HISTORY.—109 v. 353.

SECTION 3707. When any lot or lots of land lying within the limits of a municipality have been dedicated, given or granted thereto, and set apart for the use and support of schools, on application of the mayor or council thereof, the court of common pleas may authorize an exchange of such lot or lots for such other lot or lots within the limits of such municipality as the interest of the schools

Exchange of lots for school purposes.



therein require. All lots so taken in exchange, shall be held for the same purposes and subject to the same conditions as the original lots.

HISTORY.—R. S. § 2675-1; Bates, § 1536-121; 70 v. 193, § 1.

Petition,  
what shall  
contain.

SECTION 3708. Each application for such exchange of lots shall be by petition verified by the mayor. The board of education of the municipality and such other persons as the court orders shall be made party defendants. The petition shall set forth an accurate description of each lot proposed to be given or taken in exchange, the specific circumstances which render the exchange necessary, and a prayer for such order as may be required.

HISTORY.—R. S. § 2675-2; Bates, § 1536-122; 70 v. 193, § 2.

Notice of  
petition to be  
published.

SECTION 3709. Notice of the filing, pendency, and prayer of the petition shall be published for four consecutive weeks, prior to the day of hearing, in a newspaper printed in such municipality, or if there is none, in a newspaper printed in the county, and of general circulation in such municipality.

HISTORY.—R. S. § 2675-3; Bates, § 1536-123; 70 v. 193, § 3.

Hearing and  
order.

SECTION 3710. If upon the hearing of the petition it appears to the court that notice of the filing, pendency, and prayer thereof has been so given, and that such exchange of lots is necessary and will promote the interests of such schools, and that such an order would not be inconsistent with the terms and conditions of the original grant or devise, the court shall authorize the exchange to be made, and order the mayor of the municipality to execute and deliver such deed or deeds in fee simple, as are necessary to effect the exchange.

HISTORY.—R. S. § 2675-4; Bates, § 1536-124; 70 v. 193, § 4.

Transfer of  
property to  
library trustees.

SECTION 3711. A municipal corporation may transfer by ordinance duly passed, any property, real or personal, acquired or suitable for library purposes, to the trustees of any public library for the school district within which such municipal corporation is situated, upon such lawful terms and conditions as are agreed to between the municipal corporation and trustees.

HISTORY.—97 v. 133, § 1; Bates, § 1536-124a.

Trustees may  
accept such  
or other suitable  
property.

SECTION 3712. The trustees of a public library in such district may receive and accept such transfer, and receive and accept from any other source or acquire in any other manner, any property, real or personal, for library purposes, and use and apply it for such purposes, and enter into any contract relating thereto.

HISTORY.—97 v. 133, § 2; Bates, § 1536-124b.

SECTION 4065-1. That the council or other legislative authority of any city, village, or the county commissioners of any county, may designate and set apart for use as playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoors recreation centers, any lands or buildings owned by any such city, village or county, and not dedicated or devoted to other public use. Such city, village or county may, in such manner as may be authorized or provided by law for the acquisition of land or buildings for public purposes in such city, village or county, acquire lands or buildings therein for use as playgrounds, playfields, gymnasiums, public baths, swimming pools or indoor recreation centers.

Cities, villages and counties may maintain and operate, playgrounds, gymnasiums, public baths, recreation centers.

HISTORY.—109 v. 609.

SECTION 4065-2. The authority to supervise and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools or indoor recreation centers, may be vested in any existing body or board, or in a recreation board, as the city or village council or the county commissioners shall determine. The local authorities of any such city, village or county, may equip, operate and maintain, the playgrounds, playfields, gymnasiums, swimming pools, public baths or indoor recreation centers, as authorized by this act. Such local authorities may, for the purpose of carrying out the provisions of this act, employ play leaders, recreation directors, supervisors, superintendents or any other officers or employees as they deem proper.

Supervision and maintenance vested in whom; employment of leaders, etc.

HISTORY.—109 v. 609.

SECTION 4065-3. If the city or village council shall determine that the power to equip, operate, and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools, or recreation centers, shall be exercised by a recreation board, they may establish in said city or village, such recreation board which shall possess all the powers and be subject to all the responsibilities of the respective local authorities under this act. Such board when established shall consist of five persons and two of the members shall be members of the board of education of the city or village school district. The board shall be appointed by the mayor of such city or village, and shall serve for terms of five years, or until their successors are appointed, except that the members of such board first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. Members of such board shall serve without pay. Vacancies in such board, occurring otherwise than by expiration of term, shall be for the unexpired term and shall be filled in the same manner as original appointments.

Recreation board, powers and duties vacancy.

HISTORY.—109 v. 610.

Organization  
of board.

SECTION 4065-4. The members of a recreation board established pursuant to this act shall elect their own chairman and secretary, and select all other necessary officers to serve for a period of one year, and may employ such persons as may be needed. As authorized by this act, such board shall have power to adopt rules and regulations for the conduct of all business within its jurisdiction.

HISTORY.—109 v. 610.

Joint acquisition and  
maintenance.

SECTION 4065-5. Any two or more cities or villages, or any city or village, or any city or village and county, may jointly acquire property for and operate and maintain any playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers. Any school district shall have power to join with any city, village or county, in equipping, operating and maintaining playgrounds, playfields, gymnasiums, public baths, swimming pools, and indoor recreation centers, and may appropriate money therefor.

HISTORY.—109 v. 610.

Bond issue  
authorized.

SECTION 4065-6. The city or village council, or the county commissioners, may issue bonds for the purpose of acquiring lands or buildings for playgrounds, playfields, gymnasiums, swimming pools, public baths, or indoor recreation centers, and for the equipment thereof.

HISTORY.—109 v. 610.

How expenses  
paid.

SECTION 4065-7. All expenses incurred in the operation of such playgrounds, playfields, gymnasiums, swimming pools, public baths, and indoor recreation centers, established as herein provided, shall be payable from the treasury of such city, village, county or school district. The local authorities of such city, village, county or school district, having power to appropriate money therein, may annually appropriate and cause to be raised by taxation an amount for the purpose of maintaining and operating playgrounds, playfields, gymnasiums, public baths, swimming pools and recreation centers.

HISTORY.—109 v. 610.



## CHAPTER 18

### STATE BUILDING CODE APPLICABLE TO SCHOOL BUILDINGS

SECTION		SECTION	
1031.	Inspector of schoolhouses and other buildings.	12600-53.	Width of aisles required.
1032.	Written report of district inspector.	12600-54.	Requirements as to windows and light.
1033.	Copy of notice to mayor or prosecuting attorney.	12600-55.	Requirements as to entrance, exits and communicating doors.
1034.	Owner or agent shall comply with notice.	12600-56.	Requirements with respect to stairways.
1035.	Approval of plans.	12600-57.	Requirements as to gradients between different floor levels.
1036.	Penalty.	12600-58.	Passage ways.
1037.	Penalty.	12600-59.	Elevators.
4648.	Examination of public buildings as to safety in case of fire.	12600-60.	Requirements as to exit doors and windows; dimensions.
4649.	Certificate of safety.	12600-61.	Scuttles.
4650.	Re-examination in case of change in building.	12600-62.	Floors of toilet rooms.
4657.	When inspections to be made; inspectors to have access to buildings.	12600-63.	Floor and roof loads.
12600-44.	What buildings included in term school buildings; grades A & B.	12600-64.	Requirements as to heating and ventilation.
12600-45.	Class of construction required on grade A and grade B buildings.	12600-65.	Requirements as to sanitation, drinking fountains, sinks, closets, etc.
12600-45a.	Addition to school building exempt from provisions of 12600-45.	12600-66.	Requirements as to gas burners and lighting.
12600-46.	Amount of exposure required. Requirements as to courts.	12600-67.	Requirements as to electric lighting and wiring.
12600-47.	When fire wall between subdivisions of building required.	12600-68.	Requirements as to door locks, knobs, levers, etc.
12600-48.	Requirements as to hot water and steam boilers.	12600-69.	Fire extinguishers and hose to be provided.
12600-49.	School rooms to be above grade line; exceptions.	12600-70.	Fire alarm gong and connections.
12600-50.	Dimensions of school and classrooms.	12600-274.	Unlawful to construct school building otherwise than provided in act; exceptions as to repairs.
12600-51.	Requirements as to rest-rooms.	12600-279.	Penalty for violation of act.
12600-52.	Required location of assembly halls.	12600-281.	Specific officers' duty to enforce act.

SECTION 1031. The chief inspector of workshops and factories shall cause to be inspected all schoolhouses, colleges, opera houses, halls, theatres, churches, infirmaries, children's homes, hospitals, medical institutes, asylums and other buildings used for the assemblage or betterment of people in the state. Such inspection shall be made with special reference to precautions for the prevention of fires, the provision of fire escapes, exits, emergency exits, hallways, air-space, and such other matters which relate to the health and safety of those occupying, or assembled in, such structures.

Inspection of schoolhouses and other buildings.

HISTORY.—99 v. 232, § 1.

The specification of such appliances, additions or alterations as are necessary for the proper protection of school children from fire and other dangers, and the requirement that such appliances be installed, is not a provision for the taking of property without due process of law, but is a mere requirement that such property be used in a lawful way, and such a provision is a constitutional and valid enactment. Closing school and other buildings pending the installation of such appliances is within the police power of the state, and the duty of determining what appliances shall be installed may properly be delegated as in this act, leaving the details to be worked out by the officers so delegated. A board of education,

however, would have capacity to enjoin oppressive and arbitrary acts whereby school houses are closed and children deprived of the advantages of the public schools; *Akron Board of Education v. Sawyer*, 7 O. N. P. (N. S.), 401, 19 O. D. (N. P.), 1.

Where the use of another fixture, device or construction is desired which is at variance with what is described in the state building code, the department of industrial relations has authority to receive and examine plans, specifications and details relative thereto; and if after such examination said department finds that the fixture, device or construction proposed answers to all intents and purposes the fixture, device or construction described in the state building code, said department then has the authority to approve the proposed fixture, device or construction. *Op. Atty. Gen.* No. 2690, Dec. 14, 1921.

The act of April 28, 1908 (99 O. L. 232), enlarging the duties of the chief inspector of workshops and factories by requiring inspection of school houses and other places of public assemblage, and authorizing him where means for safe and speedy egress are insufficient, to specify such appliances, conditions or alterations as are necessary to insure proper protection and require that they be installed, is not a provision for the taking of property without due process of law but is a mere requirement that such property be used in a lawful way, and is a constitutional and valid enactment.

The provision of this act which authorizes the closing of school houses and other public buildings pending the installation of such appliances for protection against fire as the chief inspector of workshops may have ordered, is not in excess of the police powers of the state.

The duty of determining what appliances and alterations are necessary for protection and safety of persons against danger from fire in public buildings and school houses may properly be delegated to inspectors as prescribed in this act; and the fact that details as to such inspection are not fixed, but are left to be worked out by the administrative officers does not invalidate the act.

While the right is not open to a state agency, as it may be to a private property owner, to claim exemption from the operation of an act prescribing the duties to be performed by another state agency, yet a board of education would have the capacity to bring suit to enjoin oppressive and arbitrary acts whereby school houses are closed and school children deprived of the advantages of the public schools. *Board of Education v. Sawyer*, 7 O. N. P., N. S. p. 401.

Written report of district inspector.

SECTION 1032. Upon inspection of such structure, the district inspector of workshops and factories shall file with the chief inspector a written report of the condition thereof. If it is found that necessary precautions for the prevention of fire or other disaster have not been taken or that means for the safe and speedy egress of persons assembled therein have not been provided, such report shall specify what appliances, additions or alterations are necessary therefor. Thereupon the chief inspector shall notify in writing the owner or persons having control of such structure of the necessary appliances, additions or alterations to be added to or made in such structure.

HISTORY.—99 v. 232, § 2.

Where the inspector of workshops and factories prohibits the use of a school house until certain repairs are made, but the board of education decides to erect a new school building instead, and the electors vote for a \$25,000 bond issue for the construction thereof, but cannot levy sufficient taxes to pay bonds and maintain school, there would be an emergency within the meaning of section 5649-4,

General Code, and the necessary taxes for the retirement of bonds required for the purpose might be levied outside of all limitations of law. Op. Atty. Gen. (1914), p. 548.

SECTION 1033. If such structure is located in a municipality, a copy of such notice shall be mailed to the mayor thereof, otherwise such notice shall be mailed to the prosecuting attorney of such county. Thereupon the mayor with the aid of the police or the prosecuting attorney with the aid of the sheriff, as the case may be, shall prevent the use of such structure for public assemblage until the appliances, additions or alterations required by such notice have been added to or made in such structure.

Copy of notice to mayor or prosecuting attorney.

HISTORY.—99 v. 233, § 3.

SECTION 1034. Upon receipt of such notice, the owner or person in control of such structure shall comply with every detail embodied therein, and upon completion thereof report such fact in writing to the chief inspector of workshops and factories and to such mayor or prosecuting attorney.

Owner or agent shall comply with notice.

HISTORY.—99 v. 233, § 4.

SECTION 1035. The plans for the erection of such structure, and for any alterations in or additions to any such structure, shall be approved by the inspector of workshops and factories, except in municipalities having regularly organized building inspection departments, in which case the plans shall be approved by such department.

Approval of plans.

HISTORY.—99 v. 233, § 5.

SECTION 1036. Whoever, being an architect, builder or other person, alters the plans so approved or fails to construct or alter a building in accordance with such plans without the consent of the department that approved them, shall be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than one year, or both.

Penalty.

HISTORY.—99 v. 233, § 6.

SECTION 1037. Whoever, being a person, firm or corporation or member of a board, and being the owner or in control of any building mentioned in section ten hundred and thirty-one of this chapter, uses or permits the use of such building in violation of any order prohibiting its use issued as provided by law, or fails to comply with an order so issued relating to the change, improvement or repair of such building shall be fined not less than ten dollars, nor more than one hundred dollars, and each day that such use or failure continues shall constitute a separate offense.

Penalty.

HISTORY.—99 v. 234, § 9.

SECTION 4648. On application of the owner or person having control of any opera-house, hall, theatre, church, schoolhouse, college, academy, seminary, infirmary, sanitarium, children's home, hospital, medical institute, asylum,

Examination of public buildings as to safety in case of fire.



or other buildings used for the assemblages or betterment of people in a municipal corporation, the mayor, civil engineer, and chief engineer of the fire department shall carefully make a joint examination thereof to ascertain the means provided for the speedy and safe egress of persons at any time there assembled, and for extinguishing fire at or in such place. If the corporation has no such engineer, the mayor and two members of council shall make such examination.

HISTORY.—R. S. § 2568; Bates, § 1536-308; 62 v. 139, § 3; 74 v. 61, § 1; S. & S. 636; 90 v. 3.

The act of April 28, 1908, (99 O. L., 232), [G. C. §§1031 and 1032], enlarging the duties of the chief inspector of workshops and factories by requiring inspection of school houses and other places of public assemblage, and authorizing him where means for safe and speedy egress are insufficient to specify such appliances, additions or alterations as are necessary to insure proper protection and require that they be installed, is not a provision for the taking of property without due process of law but is a mere requirement that such property be used in a lawful way and is a constitutional and valid enactment: Board of Education vs. Sawyer, 7 O. N. P. (N. S.), 401.

Certificate  
of safety.

SECTION 4649. Upon such examination, if it is found that such building is abundantly provided with means for speedy and safe egress of such persons, and, if above the first floor, that it is provided therein with water or other equally efficient agency, and proper means to apply it, so that fire at such place can be immediately extinguished, or if the assembly rooms of such church are situated upon the ground floor, with a sufficient number of low windows, in their opinion, provided for, to secure safe and easy means of escape in case of alarm, they or a majority of them, shall issue to such owner or person having control, a certificate of the fact, which shall continue in force one year, unless sooner revoked by council.

HISTORY.—R. S. §§ 2568, 2569; Bates, §§ 1536-308, 1536-309; 62 v. 139, § 3; S. & S. 636.

Re-examina-  
tion in case  
of change in  
building.

SECTION 4650. If a change or alteration is made in such building, the owner or person having charge of it shall notify the mayor of the fact, who shall cause to be made a re-examination in all respects like that provided for in the preceding section, and if upon such examination such owner, or person having control, is entitled to such certificate, it shall be issued to him, with like effect.

HISTORY.—R. S. § 2570; Bates, § 1536-310; 62 v. 139, § 3; S. & S. 636

When in-  
spections to  
be made; in-  
spector to  
have access  
to buildings.

SECTION 4657. The chief inspector of workshops and factories, or his district inspectors, shall make inspections of buildings named in the first section of this chapter, as often as he deems necessary, or upon the written demand of the agent or owner of such structures, or upon the written request of five or more citizens of the municipal corporation, county or township in which such structure is located; and they shall have access to such buildings at any time it is deemed necessary to inspect them.

HISTORY.—R. S. § 2572b; Bates, § 1536-314; 93 v. 35; 92 v. 409; 87 v. 279; 86 v. 46, 47.

SECTION 12600-44. *Classification.* Under the classification of school buildings are included all public, parochial and private schools, colleges, academies, seminaries, libraries, museums and art galleries, including all buildings or structures containing one or more rooms used for the assembling of persons for the purpose of acquiring knowledge, or for mental training. [Classification.]

GRADE A. Under this grade are included all rooms or buildings appropriated to the use of primary, grammar or high schools, including all rooms or buildings used for school purposes by pupils or students eighteen (18) years old or less.

GRADE B. Under this grade are included all rooms or buildings appropriated to the use of schools, colleges, academies, seminaries, libraries, museums, and art galleries; including all rooms or buildings not included under grade "A."

HISTORY.—102 v. 586, § 1 (619).

SECTION 12600-45. *Class of construction required.* Grade A. Where the main first floor line is eight (8) feet or more above the grade line at any entrance to or exit from any story above the basement, the basement shall be rated as the first story. Stories over fifteen (15) feet high, measuring from the floor to the ceiling line shall be rated as two stories. All buildings more than two stories high shall be of fireproof construction.

Class of construction required.

All buildings two stories high and less shall be of fireproof or composite construction.

No school building of grade A shall be built more than three (3) stories high.

Grade B. Where any floor level is more than twenty-six (26) feet above the grade line at any entrance to or exit from the building, the building shall be of fireproof construction.

Where the floor levels are less than twenty-six (26) feet above the grade line at any entrance to or exit from the building, the building shall be of composite or fireproof construction.

No school building of grade B shall be built more than five (5) stories high, nor shall the topmost floor level be more than fifty (50) feet above the grade line at any entrance to or exit from the building.

Provided, however, that this provision as to the number of stories and the height of the topmost floor level, shall not apply to libraries in buildings of fireproof construction throughout.

Grades A and B. *Exceptions.* All buildings one story high, without basement and with the floor line not more than four (4) feet above the grade line shall be of fireproof, composite, or frame construction, providing when built of frame construction the same is erected thirty (30) feet away from any other building structure or lot line, and two hundred (200) feet beyond the city fire limits.

HISTORY.—102 v. 586, § 2 (620); 103 v. 860, § 2.

Addition to school building exempt from provisions of 12,600-45.

SECTION 12600-45a. None of the provisions of section 12600-45 of the General Code shall prevent the construction of an addition to any school building two stories high or less; such addition to be of the same construction and material as the original building whether it be of fireproof, composite or frame construction. Not more than one addition shall ever be added to any school building under the provisions of this section and the lower floor space of such addition shall in no case exceed twelve hundred square feet.

HISTORY.—104 v. 177.

[Exposure and courts.]

SECTION 12600-46. *Exposure and Courts.* EXPOSURE. No building of grade B shall occupy more than ninety-five (95) per cent of a corner lot nor more than ninety (90) per cent of an interior lot or site.

No building of grade A shall occupy more than seventy-five (75) per cent of a corner lot nor more than seventy (70) per cent of an interior lot or site. The measurements being taken at the lowest tier of floor joists.

No wall of any building coming under this classification containing windows used for lighting school or class rooms shall be placed nearer any opposite building, structure or property line than thirty (30) feet.

Definitions.

COURTS. By inner court is meant an open shaft or court, surrounded on all sides by walls.

By recess court is meant an open air shaft or court, having one side or end opened, and when such opening is on a lot line, it is an inner court.

Inner light courts permitted.

Recess or inner light courts may be used, providing the least distance between any two opposite walls containing windows for lighting class and school rooms is equal to the height from the lowest window sill to the top of the highest cornice or fire wall. All walls to inner or recess courts shall be of masonry or other fireproof construction (except for buildings of frame construction).

No inner or recess court shall be covered by a roof, skylight, or other obstruction.

If area ways are used for lighting basements, the width of the area shall be not less than equal to the height from the lowest window sill to the top of the adjoining grade line.

HISTORY.—102 v. 586, § 3 (620).

[Subdivisions and fire stops.]

SECTION 12600-47. *Sub-divisions and Fire Stops.* Buildings of this classification built in connection with a building of a lower grade of construction, shall be separated from the other parts of the building by a standard fire wall, and all communicating openings in these walls shall be covered by double standard fire doors, using self closing door on one side of the wall and an automatic fire door or an automatic rolling steel shutter on the other. The automatic shutters or doors for openings used as a means of ingress or egress shall be kept open during the occupancy of the building.

Fire wall between sub-divisions.



All rooms or apartments used for general storage, storing of furniture, carpenter shops, general repairing, paint shops or other equally hazardous purposes shall be constructed with fireproof walls, ceilings and floors, and all openings between these rooms or apartments and the other parts of the building shall be covered by double standard fire doors, using a self closing door on one side of the wall and an automatic fire door or an automatic rolling steel shutter on the other.

No open walls communicating between any two stories shall be used, except the necessary stair and elevator walls.

All exterior and court walls of buildings coming under this classification (except buildings of frame construction) within thirty (30) feet of any other building, structure or lot line shall be provided with the following fire stops, viz:

Walls shall be standard fire walls;

All windows shall be automatic standard fireproof windows, and all door openings shall be covered by standard hinged fire doors without any automatic attachments.

HISTORY.—102 v. 586, § 4 (621).

SECTION 12600-48. *Heater Room.* Furnaces, hot water heating boilers and low pressure steam boilers may be located in the building, providing the heating apparatus, breeching, fuel room and firing room are inclosed in a standard fireproof heater room, and all openings into the same are covered by standard self closing fire doors.

[Heater room];  
boilers.

No boiler or furnace shall be located under any lobby, exit, stairway or corridor.

No cast iron boiler carrying more than 10 pounds pressure or steel boiler carrying more than 35 pounds pressure shall be located within the main walls of any school building.

HISTORY.—102 v. 586, § 5 (622).

SECTION 12600-49. *Basement Rooms.* No rooms used for school purposes shall be placed wholly or partly below the grade line. Rooms for domestic science, manual training and recreation may be placed partly below grade, provided the same are properly lighted, heated and ventilated.

[Basement rooms.]

HISTORY.—102 v. 586, § 6 (622).

SECTION 12600-50. *Dimensions of School and Class Rooms.* FLOOR SPACE. The minimum floor space to be allowed per person, in school and class rooms, shall not be less than the following, viz:

[Dimensions of school and class rooms.]

Primary grades sixteen (16) square feet per person.

Grammar grades eighteen (18) square feet per person.

High schools twenty (20) square feet per person.

All other schools and class rooms twenty-four (24) square feet per person.

CUBICAL CONTENTS. The gross cubical contents of each school and class room, shall be of such a size as to provide for each pupil or person not less than the following

cubic feet of air space, viz: Primary grades 200 cubic feet, grammar grades 225 cubic feet, high schools 250 cubic feet and in grade B buildings 300 cubic feet.

**HEIGHT OF STORIES.** Toilet, play and recreation rooms shall be not less than eight (8) feet high in the clear measuring from the floor to the ceiling line.

The height of all rooms, except toilet, play and recreation rooms shall be not less than one-half the average width of the room, and in no case less than ten (10) feet high.

**CAPACITY OF ROOMS.** The plan shall be clearly marked showing the maximum number of pupils or persons to be accommodated in each room.

HISTORY.—102 v. 586, § 7 (622).

[Rest rooms.]

**SECTION 12600-51. *Rest Rooms.*** In all school buildings of grade "A" containing four and not more than eight school or class rooms, a rest or hospital room shall be provided, and in all school buildings of grade "A" containing more than eight school or class rooms, two such rooms shall be provided.

These rooms shall be provided with a couch and supplies for first aid to the injured, and where water supply is available shall be provided with water closets and sinks.

HISTORY.—102 v. 586, § 8 (623).

[Assembly halls.]

**SECTION 12600-52. *Assembly Halls.*** A room seating or accommodating more than one hundred (100) persons shall be considered as an assembly hall.

No assembly hall in a building of grade A shall be located above the second story in a building of fireproof construction, nor above the first story in a building of composite construction.

Otherwise assembly halls shall be constructed and equipped as called for under part 2, title I.

HISTORY.—102 v. 586, § 9 (623).

Class room  
seats and  
aisles.

**SECTION 12600-53. *Class room seats and aisles.*** Class and school rooms shall have aisles on all wall sides. In primary rooms, center aisles shall not be less than seventeen inches, and wall aisles not less than two feet four inches wide. In grammar rooms, center aisles shall not be less than eighteen inches and wall aisles not less than two feet six inches wide. In high school rooms, center aisles shall not be less than twenty inches and wall aisles not less than three feet. In all other class and school rooms, center aisles shall not be less than twenty-four inches, and wall aisles not less than three feet.

HISTORY.—102 v. 586, § 10 (623); 107 v. 621 (626).

Light.

**SECTION 12600-54. *Optics.*** The proportion of glass surface in museums, libraries and art galleries, shall be not less than one (1) square foot of glass to each six (6) square feet of floor area.

The proportion of glass in each class, study, recitation, high school room and laboratory, shall not be less than one (1) square foot of glass to each five (5) square feet of floor area. (For glass surface in rooms used for domestic science and manual training, see part 2, title 7, workshops, factories and mercantile establishments.)

The proportion of glass surface in each play, toilet or recreation room, shall be not less than one (1) square foot of glass to each ten (10) square feet of floor area.

Windows shall be placed either at the left, or the left and rear of the pupils when seated. Windows.

Tops of windows, except in libraries, museums and art galleries, shall not be placed more than eight (8") inches below the minimum ceiling height as established under section 7.

The unit of measurement for the width of a properly lighted room, when lighted from one side only, shall be the height of the window head above the floor.

The width of all class and recitation rooms when lighted from one side only, shall never exceed two and one-half times this unit measured at right angles to the source of light.

All windows shall be placed in the exterior walls of the building, except for halls, corridors, stock and supply closets which may be lighted by ventilated skylights or by windows placed in interior walls or partitions.

Museums, libraries and art galleries may be lighted by skylights, or clear story windows.

HISTORY.—102 v. 586, § 11 (628).

SECTION 12600-55. *Means of Egress.* All means of egress or exit, shall be exit doors unless the same lead to A standard fire escapes, which shall be either exit doors or exit windows. Entrances  
exits.

GRADE A BUILDINGS, OF FIREPROOF CONSTRUCTION. Means of egress from rooms in the basement and superstructure shall be in proportion to three (3) feet in width to each one hundred (100) persons to be accommodated in building accommodating not more than five hundred (500) persons.

When buildings accommodate from five hundred (500) to one thousand (1,000) persons, two (2) feet additional exit width shall be provided for each one hundred (100) persons or fraction thereof in excess of five hundred (500) persons.

When buildings accommodate more than one thousand (1,000) persons, one (1) foot additional exit width shall be provided for each one hundred (100) persons or fraction thereof in excess of one thousand (1,000) persons, but in no case shall an exit be less than (3) feet or more than six (6) feet wide.

No inclosed standard fireproof stairways or fire escapes will be necessary for buildings of fireproof construction and all exits shall lead to the main corridors.



**GRADE A. BUILDINGS OF COMPOSITE CONSTRUCTION.** Each room in the superstructure used by pupils as a class or school room, shall have at least two separate and distinct means of egress.

No class, school or high school room shall have more than one door or opening between it and the main halls or corridors of the building.

Communicat-  
ing doors.

Communicating doors between two class or school rooms shall not be considered as a means of egress.

The proportion of the exits to the seating capacity shall not be less than three (3) feet to each one hundred (100) persons to be accommodated.

Exits and  
stairways.

One-half of the exits shall lead to the main corridors, and the other half to inclosed fireproof stairways, B, C or D standard fire escapes or stone, cement or iron steps leading to the grade line. No exit door shall be less than three (3) feet or more than six feet wide. No fire escape or outside stairway shall be used when the height of the same exceeds eight (8) feet above the grade line.

Each room in the basement used by the pupils shall have a direct exit not less than three (3) feet wide, with stone, cement or iron stairways leading up to the grade line. Stairways shall be not less than three feet six inches (3' 6") wide.

Areaways around such stairways shall have substantial hand and guard rails on both sides.

These exits shall be provided in addition to the usual service stairways and means of ingress.

**GRADE B. BUILDINGS OF FIREPROOF OR COMPOSITE CONSTRUCTION.** Each room or apartment used for any purposes other than storage shall have two separate and distinct means of egress.

Location of  
exits.

If the various rooms connect directly with a hallway, means of egress at each end of the hallway will be sufficient; providing however that it is not necessary to pass one means of egress in order to reach the other.

These means of egress shall be either an inside stairway running continuously from the grade line to the topmost story, or from the basement to the grade line; A, B, C or D standard fire escapes; stone, cement or iron steps leading to the grade line; or self-closing doors leading directly to the main corridor of an adjoining section of the same building containing a stairway.

Means of egress shall be at the rate of three (3) feet per hundred persons to be accommodated.

It shall be presumed that half the persons will go to either means of egress.

In libraries, museums, and art galleries, the capacity of the building shall be established by allowing to each person fifteen (15) square feet of floor area in all lobbies, exhibition rooms, toilet rooms, corridors, stairs and other public parts of the building.

GRADE A and B. BUILDINGS OF FRAME CONSTRUCTION. Each room shall have at least two three (3) feet exits; one leading to the open with steps to the grade, and the other the usual means of ingress; and all steps shall have hand rails on both sides.

SIGNS. Over each exit door shall be painted a sign indicating the word EXIT in plain block letters not less than six (6) inches high. Signs.

HISTORY.—102 v. 586, § 12 (624).

SECTION 12600-56. *Stairways.* GRADE A. BUILDINGS OF FIREPROOF CONSTRUCTION. Buildings of fireproof construction shall have at least two stairways located as far apart as possible and the same shall be continuous from the grade line to the topmost story. [Stairways.]

The basement shall have at least two stairways located as far apart as possible and run from the basement floor level to the grade line, which stairway may be placed under the main stairway. No further means of egress will be necessary. Number of stairways and construction.

Stairways shall be enclosed with masonry of fireproof walls with standard self-closing fire doors at each story, and shall be provided with platforms and exit doors not less than three (3') feet wide at the grade line.

GRADE A. BUILDINGS OF COMPOSITE CONSTRUCTION. Basement stairways shall be enclosed with either brick walls not less than nine (9) inches thick, concrete walls six (6") inches thick, or hollow tile walls twelve inches (12) thick. [Basement stairways.]

All openings in these walls shall be provided with standard self-closing fire doors. The width of stairways required under this classification shall be equally divided, one-half being placed in the main service stairways and the other half in the enclosed fireproof stairs or fire escapes. No closet for storage shall be placed under any stairway. Self-closing doors.

GRADE B. BUILDINGS OF FIREPROOF CONSTRUCTION. Stairways shall be separated from the other parts of the building by masonry or fireproof partitions with standard self-closing fire doors. [Fireproof construction.]

Wire glass not less than one-quarter inch ( $\frac{1}{4}$ ") thick, set in stationary metal sash and frames may be used in place of stairway partitions. No wire glass shall be placed in partitions separating stairways from work or storage rooms containing highly combustible material.

Stairways shall be provided with grade line platforms with exit doors not less than three (3) feet wide leading to streets, alleys or open courts.

GRADE B. BUILDINGS OF COMPOSITE CONSTRUCTION. In buildings of composite construction the stairways shall be separated from the other parts of the building by masonry of fireproof walls, with fireproof ceiling at the topmost story, with fireproof floor at the lowermost level, and all openings to these inclosures shall be provided with standard selfclosing fire doors. [Stairways in buildings of composite construction.]

The above enclosures shall be provided with grade line platforms, and with exit doors not less than three (3) feet wide leading to streets, alleys or open courts.

No closet for storage shall be placed under any stairway.

[Monumental  
stairs.]

**MONUMENTAL STAIRS.** Monumental stairs from the basement to the second story may be used in buildings of grade B, providing they are placed as far distant from the other stairways as possible.

Construction  
and dimen-  
sions of  
stairways.

**STAIRWAY CONSTRUCTION.** Width of stairways shall be at the rate of three feet per hundred (100) persons accommodated in buildings accommodating not more than five hundred (500) persons, when building accommodates from five hundred (500) to one thousand (1,000) persons two feet of additional stairway width shall be provided for every one hundred (100) persons or fraction thereof in excess of five hundred (500), when buildings accommodate more than one thousand (1,000) persons, one foot additional stairway width shall be provided for every one hundred (100) persons or fraction thereof in excess of one thousand (1,000) persons.

No stairway shall be less than three feet six inches (3' 6") nor more than six (6) feet wide measuring between the hand rails. Stairways over six (6) feet wide shall have substantial center hand rails with angle and newel posts not less than six (6) feet high. No stairway shall have less than three (3) nor more than sixteen (16) risers in any run.

No stairway shall have winders and all nosing shall be straight.

A uniform width shall be maintained in all stairways and stair platforms by rounding the corners and beveling the angles.

Hand rails shall be provided on both sides of all stairways and steps.

Outside stairways and areaways shall be provided with guard rails not less than two feet six inches (2' 6") high.

Stairways shall have a uniform rise and tread in each run as follows, viz.:

Primary schools shall have not more than a six (6) inch rise or less than eleven (11) inch tread.

Grammar schools shall have not more than a six and one-half (6½) inch rise nor less than eleven (11) inch tread.

All other schools shall have not more than a seven (7) inch rise nor less than ten and one-half (10½) inch tread.

The above dimensions shall be from tread to tread, and from riser to riser.

No door shall open directly upon a stairway, but shall open on a platform or landing equal in length to the width of the door.

In combination primary and grammar school buildings all stairways below the first floor level shall be designed for



primary school pupils, and all stairways above the first floor level may be designed for either primary or grammar pupils.

No closet for storage shall be placed under any stairway.

All treads shall be covered with rubber or lead mats or equal non-slipping surface.

HISTORY.—102 v. 586, § 13 (626).

SECTION 12600-57. *Gradients.* To overcome any difference in floor levels which would require less than three risers, gradients shall be employed of not over one (1) inch rise in twelve (12) inch run.

[Gradients.]

Floors at all exits shall be so designed as to be level and flush with the adjacent floors.

HISTORY.—102 v. 586, § 14 (628).

SECTION 12600-58. *Passageways.* No hall or passageway leading to a stairway or exit shall be less in width of the stairway or exit, as the case may be.

[Passageways.]

Halls and passageways shall be so designed and proportioned as to prevent congestion and confusion.

HISTORY.—102 v. 586, § 15 (628).

SECTION 12600-59. *Elevators.* Elevators shall be enclosed in standard fire walls, or by fireproof walls, ceilings and floors, and all openings to the enclosures shall be covered by standard fire doors for elevators.

[Elevators.]

HISTORY.—102 v. 586, § 16 (628).

SECTION 12600-60. *Exit Doors and Windows.* Exit doors shall not be less than three (3) feet wide, nor less than six feet four inches (6' 4") high, level with the floor, swing outward, viz.: toward the open, or toward the natural means of egress, and shall be so hung as not to interfere with passageways or close other openings.

[Exit doors and windows]; dimensions.

No single door or leaf to a double door shall be more than four (4) feet wide. No two doors hinged together shall be used as a means of ingress or egress. Accordion doors may be used in dividing class rooms, providing the free sections swing outward and give the required amount of exit width.

No double acting, rolling, sliding or revolving exit or entrance doors shall be used.

Exit windows leading to "A" standard fire escapes shall have the lower sash hinged to the side to swing out, or hung on weights to rise. This sash shall be not less than two feet six inches (2' 6") wide, not less than three (3) feet high and not more than two (2) feet above the floor line.

HISTORY.—102 v. 586, § 17 (628).

SECTION 12600-61. *Scuttles.* Every building exceeding twenty-five (25) feet in height shall have in the roof a bulkhead or scuttle not less than two (2) feet wide and not less than three (3) feet long, covered on the outside with

[Scuttles.]

metal and provided with a stairway or permanent ladder leading thereto.

Bulk-head and scuttle doors shall never be locked.

HISTORY.—102 v. 586, § 18 (629).

Floors of  
toilet rooms.

SECTION 12600-62. *Special Construction.* All floors to toilet rooms, lavatories, water closet compartments, or any enclosure where plumbing fixtures are used within the building, shall have a waterproof floor and base made of non-absorbent indestructible waterproof material, viz.: Asphalt, glass, marble, vitrified or glazed tile or terrazzo, or monolithic composition.

Base shall be not less than six (6) inches high and shall have a sanitary cove at the floor level.

All basement rooms used by the pupils or public shall have a damp or waterproof floor.

All basement ceilings except where concrete or brick is used shall be plastered or be covered with pressed or rolled steel ceiling.

Whenever possible, window and door jambs shall be rounded and plastered, except in museums, libraries and art galleries.

All interior wood finish shall be as small as possible and free from unnecessary dust catchers.

All floors between the finished portions of the building shall be deadened or made sound proof.

HISTORY.—102 v. 586, § 19 (629).

[Floor and  
roof loads.]

SECTION 12600-63. *Floor and Roof Loads.* In calculating constructing the superimposed load uniformly distributed on the various floors and roofs shall be assumed at not less than the following, viz.:

Class rooms, sixty (60) pounds per square foot.

Halls, assembly halls, stairs and corridors, eighty (80) pounds per square foot.

Museums, libraries and art galleries, one hundred (100) pounds per square foot.

Attics not used for storage, twenty (20) pounds per square foot.

Roofs, forty (40) pounds per square foot.

HISTORY.—102 v. 586, § 20 (629).

Heating and  
ventilation.

SECTION 12600-64. *Heating and Ventilation.* A heating system shall be installed which will uniformly heat all corridors, hallways, play rooms, toilet rooms, recreation rooms, assembly rooms, gymnasiums and manual training rooms to a uniform temperature of 65 degrees in zero weather; and will uniformly heat all other parts of the building to 70 degrees in zero weather.

EXCEPTIONS. Rooms with one or more open sides used for open air or outdoor treatment.

The heating system shall be combined with a system of ventilation which will change the air in all parts of the

building except the corridors, halls, and storage closets not less than six times per hour.

The heating system to be installed where a change of air is required, shall be either standard ventilating stoves, gravity or mechanical furnaces, gravity indirect steam or hot water; or a mechanical indirect steam or hot water system.

Where wardrobes are not separated from the class room they shall be considered as part of the class room and the vent register shall be placed in the wardrobe.

These wardrobes are separated from the class rooms, they shall be separately heated and ventilated the same as the class rooms.

The bottom of warm air registers shall be placed not less than (8) feet above the floor line, except foot warmers which may be placed in the floors of the main corridors or lobbies.

Vent registers shall be placed not more than two inches (2") above the floor line.

The fresh air supply shall be taken from the outside of the building and no vitiated air shall be re-heated. The vitiated air shall be conducted through flues or ducts and be discharged above the roof of the building.

A hood shall be placed over each and every stove in the domestic science room, over each and every compartment desk or demonstration table in the chemical laboratories and chemical laboratory lecture rooms, of such a size as to receive and carry off all offensive odors, fumes and gases.

These ducts shall be connected to vertical ventilating flues placed in the walls and shall be independent of the room ventilation as previously provided for.

Where electric current is available electric exhaust fans shall be placed in the ducts or flues from the stove fixtures in domestic science rooms and chemical laboratories, and where electric current is not available and a steam or hot-water system is used, the main vertical flues from the above ducts shall be provided with accelerating coils of proper size to create sufficient draught to carry away all fumes and offensive odors.

HISTORY.—102 v. 586, § 21 (629).

See opinions of Attorney General No. 2690 (1921), cited under Sec. 1031.

SECTION 12600-65. *Sanitation.* Where a water supply and sewerage system are available a sanitary equipment shall be installed as follows:

[Sanitation.]

In the superstructure of the building one sink and one drinking fountain shall be installed on each floor to each six thousand (6,000) square feet of floor area or less.

In the basement one sink and one drinking fountain shall be installed on the males' side, and the same on the



females' side, to each three hundred and fifty (350) pupils, or less.

Sinks shall be the ordinary slop sinks, or in lieu of same, lavatories may be used providing the waste plug or stopper has been removed.

Drinking  
fountains,  
sinks, closets,  
etc.

Sanitary schoolhouse drinking fountains with jet giving a continuous flow of water shall be installed, and no tin cups or tumblers shall be allowed in or about any school building.

In libraries, museums and art galleries there shall be provided the following fixtures, viz:

One water closet to each one hundred (100) females, or less.

One water closet to each two hundred (200) males, or less.

One urinal to each two hundred (200) males, or less.

The above to be based upon the actual number of persons to be accommodated, the capacity, being established as prescribed under section 12, means of egress.

In all other school buildings there shall be provided the following fixtures, viz.:

One water closet for each fifteen (15) females or less.

One water closet for each twenty-five (25) males or less.

One urinal for each fifteen (15) males or less.

Toilet accommodations for males and females shall be placed in separate rooms, with a traveling distance between the same of not less than twenty (20) feet.

Juvenile or short closets shall be used for primary and grammar grade schools. This does not apply when latrine closets are used.

In buildings accommodating males and females it shall be presumed that the occupants will be equally divided between males and females.

Where water supply and sewerage system are not available no sanitary equipment shall be installed within the building, but pumps in lieu of drinking fountains, closets and urinals in the above proportions shall be placed upon the school building grounds, and no closets or urinals shall be placed nearer any occupied building than fifty (50) feet.

Where pumps or hydrants are used the outlet shall be inverted.

Buildings more than three stories in height shall be provided with toilet rooms in each story and basement, and in these shall be installed water closets and urinals in the above required ratios in proportion to the number of persons to be accommodated in the various stories.

Toilet rooms for males shall be clearly marked "Boys' toilet" or "Men's toilet" and for females "Girls' toilet" or "Women's toilet."

HISTORY.—102 v. 586, § 22 (630).

An ordinance of the city of Columbus requiring the issuance to the owner or his agent of a permit for the construction of a

building involving the installation of sanitary plumbing is not applicable to construction work at the Ohio State University. It is the power and duty of the inspector of buildings in the city of Columbus to approve the plans of buildings of the Ohio State University, and to enforce the state building code with respect thereto.

The ordinance of the city of Columbus for licensing master and journeyman plumbers and prohibiting work of the trade of plumbing in the city of Columbus by unlicensed plumbers, is applicable to persons working on the installation of plumbing at the Ohio State University, whether employes of the state or not. Op. Atty. Gen. (1914), p. 1307.

SECTION 12600-66. *Gas Lighting.* A system of gas lighting if used shall be installed as follows: [Gas light-  
ing.]

All outlets in class and recitation rooms shall be dropped from the ceiling and be equally distributed so as to uniformly light the room.

The number of burners provided shall not be less than the following: Burners.

In auditoriums one three (3) foot burner to each fifteen (15) square feet of floor area.

In gymnasiums one three (3) foot burner to each fifteen (15) square feet of floor area.

In halls and stairways one three (3) foot burner to each twenty-four (24) square feet of floor area.

In class and recitation rooms one three (3) foot burner to each (12) square feet of floor area.

Enclosed fireproof stairways, service stairways, corridors, passageways and toilet rooms, shall be well lighted by artificial light and said lights shall be kept burning when the building is occupied after dark.

Burners shall be placed seven (7) feet above the floor line.

No swinging or movable gas fixtures or brackets shall be used.

HISTORY.—102 v. 586, § 23 (632).

SECTION 12600-67. *Electric Work.* An electric lighting system if used shall be installed as follows: [Electric  
work.]

All wiring shall be done in conduit. All outlets in class and recitation rooms shall be dropped from the ceiling and be equally distributed so as to uniformly light the room. Wiring.

The candle power of lamps provided shall not be less than the following, viz.: Lighting.

Auditorium one candle power to two and one-half square feet of floor area.

Gymnasium one candle power to two and one-half square feet of floor area.

Halls and stairways one candle power to four square feet of floor area.

Class and recitation rooms one candle power to two square feet of floor area.

Enclosed fireproof stairways, service stairways, corridors, passageways and toilet rooms shall be lighted by

artificial light, and said lights shall be kept burning when the building is occupied after dark.

HISTORY.—102 v. 586, § 24 (632).

[Finishing hardware.]

SECTION 12600-68. *Finishing Hardware.* All entrance, exit and emergency doors shall be equipped with hardware of such nature as to be always unlockable from within.

Locks, knobs, levers, etc.

Single outside entrance doors shall have key locks that can be locked from the outside, but can always be opened on the inside, by simply turning the knob or lever, or by pushing against a bar or plate, whether same are locked on the outside or not, the locks being operated by key from the outside only. No night latch attachment shall be placed on face of these locks, or other bolts, hooks, thumb knobs or other locking device shall be placed on these doors.

Outside doors used for exit purposes only, including doors to inclosed fireproof stairways shall have one knob latch or a double extension bolt as hereinafter mentioned, and no bolts, hooks, or other locking device shall be placed on these doors.

Doors from halls to rooms and cloak rooms shall have no locks upon same, but shall be equipped with knob latches only. If locks are desired, the same style locks as above specified for entrance doors shall be used and the same shall be so placed on the door so that they can be locked on the hall side, and can always be opened on the room or cloak room sides, whether locked on hall side or not.

One of each pair of outside or inside double doors shall have a double extension panic bolt on same, bolt to have knob, lever, push bar, push plate, push handle, or device whereby the simple act of turning a knob, or lever, or pushing against the same will release the top and bottom bolts at the same time and allow the doors to open.

Independent top and bottom bolts shall not be used.

The outer door of each pair of outside and inside double doors shall have lock, or latch as above specified.

All bolts, latches, face of locks, working parts of extension bolts, and other exposed working parts about this hardware shall be of cast metal properly protected from corrosion.

Double box windows to A standard fire escapes shall be provided with sash locks and two bar lifts, and hinged sash with either a sash lock, one knob latch or lever bolt.

HISTORY.—102 v. 586, § 25 (632).

[Fire extinguishers]; hose.

SECTION 12600-69. *Fire Extinguishers.* Standard stand pipe and hose shall be provided in basement of grade A buildings and in each story and basement of grade B buildings with sufficient length of one and one-half (1½) inch hose to reach any part of the story.

Hose lengths shall be not more than seventy-five (75) feet, and where hose of such length will not reach the ex-



treme portions of the story additional standpipes and hose shall be provided.

Where water supply is not available, standard chemical fire extinguishers shall be provided in the proportion of one (1) extinguisher to each two thousand (2000) square feet of floor area or less.

Standard chemical fire extinguishers shall be provided in each story above the basement of grade A buildings in the proportion of one extinguisher to each two thousand (2,000) square feet of floor area, or less.

All fire extinguishers shall be prominently exposed to view and always accessible.

HISTORY.—102 v. 586, § 26 (633).

SECTION 12600-70. *Fire Alarm.* All buildings with basement, and all buildings over one story high shall be provided with eight (8) inch in diameter trip fire gongs with connections enabling the ringing of same from any story or basement.

[Fire  
alarm];  
gongs.

In semi-detached buildings gongs shall be provided for each section and shall be connected up so as to ring simultaneously from any story or basement of either section.

Gongs shall be centrally located in the main halls, and the operating cords shall be placed so as to be always accessible.

EXCEPTIONS. In institutions for the deaf, electric lights with red globes shall be placed near each teacher's desk, and these shall be operated simultaneously by switches placed in each story and basement.

HISTORY.—103 v. 586, § 27 (634).

SECTION 12600-274. It shall be unlawful for any owner or owners, officers, board, committee or other person to construct, erect, build, equip or cause to be constructed, erected, built or equipped any opera house, hall, theater, church, schoolhouse, college, academy, seminary, infirmary, sanatorium, children's home, hospital, medical institute, asylum, memorial building, armory, assembly hall or other building used for the assemblage or betterment of people in any municipal corporation, county or township in this state, or to make any addition thereto or alteration thereof, except in case of repairs for maintenance without affecting the construction, sanitation, safety or other vital feature of said building or structure, without complying with the requirements and provisions relating thereto contained in this act.

Alterations.

HISTORY.—102 v. 586, § 2 (586).

The provisions of the state building code, with respect to the subject of sanitation, including the matter of sanitary plumbing applied to the buildings here in question, to wit, those now being erected by the city of Cincinnati at Glendale, Ohio, for the purpose of being used as a boys' refuge home, and so applying the provisions of the state code as to sanitary plumbing operate to exclude the conflicting provisions of municipal ordinances and of the plans and specifications with respect to plumbing in said

buildings. The provisions of the Cincinnati plumbing code, being governmental in their nature, have no operation outside of the corporate limits of the city of Cincinnati. !

The duty of enforcing the state building code in this case, is in the state board of health, and inasmuch as the observance of the provisions of the state building code is procured by the sanction of penalties, no other remedy than the invocation of these penalties can be resorted to to enforce its provisions. Op. Atty. Gen. (1914), p. 1525.

[Penalty.]

SECTION 12600-279. Whoever being the owner or having the control as an officer, or as a member of a board or committee or otherwise of any opera house, hall, theater, church, schoolhouse, college, academy, seminary, infirmary, sanatorium, children's home, hospital, medical institute, asylum, memorial buildings, armory, assembly hall or other building for the assemblage or betterment of people in any municipal corporation, township or county in this state, violates any of the provisions of the foregoing act or fails to conform to any of the provisions thereof, or fails to obey any order of the state fire marshal, chief inspector of workshops and factories or building inspector or commissioner in cities having a building inspection department, or the state board of health in relation to the matters and things in this act contained shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars and stand committed until said fine and costs be paid or secured to be paid or until otherwise discharged by the due process of law.

HISTORY.—102 v. 586, § 1 (587).

Specific of-  
ficers' duty  
to enforce  
act.

SECTION 12600-281. It shall be the duty of the state fire marshal or fire chief of municipalities having fire departments to enforce all the provisions herein contained relating to fire prevention.

It shall be the duty of the chief inspector of workshops and factories or building inspector, or commissioner of buildings in municipalities having building departments to enforce all the provisions herein contained for the construction, arrangement and erection of all public buildings or parts thereof, including the sanitary condition of the same, in relation to the heating and ventilation thereof.

It shall be the duty of the state board of health or building inspector or commissioner, or health departments of municipalities having building or health departments to enforce all the provisions in this act contained, in relation and pertaining to sanitary plumbing. But nothing herein contained shall be construed to exempt any other officer or department from the obligation of enforcing all existing laws in reference to this act.

HISTORY.—102 v. 586, § 1 (586).

See opinions of Attorney General as follows:  
(1914), p. 1525, cited under Sec. 12600-274.  
No. 2690, (1921), cited under Sec. 1031.

## CHAPTER 19

### SCHOOLS AND ATTENDANCE

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Duties of district board of health relative to schools.

SECTION 1261-26. In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and other charitable, benevolent, correctional in-

stitutions. The district board of health may also provide for the inspection of dairies, stores, restaurants, hotels and other places where food is manufactured, handled, stored, sold or offered for sale, and for the medical inspection of persons employed therein. The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent diseases.

Provided that in the medical supervision of school children as herein provided, no medical or surgical treatment shall be administered to any minor school child except upon the written request of a parent or guardian of such child; and provided further, that any information regarding any diseased condition or defect found as a result of any medical school examination shall be communicated only to the parent or guardian of such child and if in writing shall be in a sealed envelope addressed to such parent or guardian.

HISTORY.—108 v. Pt. I 236 (240), § 11; 108 v. Pt. II (1088). The statute of which this section is a part was declared by the legislature to be an emergency measure. See 108 v. Pt. II 1085 (1093), § 4. This section is not analogous to the section bearing this number in Supp. to P. & A. Code, which was 103 v. 216 (220), § 11.

The positions of member of the city board of education and deputy health commissioner are not incompatible. Op. Atty. Gen. (1920), p. 995.

SECTION 7644. Each board of education shall establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof. Every elementary day school so established shall continue not less than thirty-two nor more than forty weeks in each school year. All the elementary schools within the same school district shall be so continued.

Elementary  
schools;  
minimum and  
maximum  
school weeks.

HISTORY.—R. S. § 4007; 75 v. 513, § 50; 95 v. 115; 97 v. 358; 99 v. 85.

The provisions of this section were characterized as mandatory in the case of *Rabe vs. Board of Education*, 88 O. S., 403, 420.

It is the intent of Sections 7644 and 7695 G. C. that a board of education shall maintain a school session of not less than thirty-two weeks in each year as a condition precedent to obtaining state aid. It is not the intention to demand the impossible, however, and when through destruction of the school building by fire, compliance is absolutely prevented failure to maintain an eight months' session will not preclude the right to state aid. Op. Atty. Gen. (1912), p. 120.

Under the provisions of Section 7684 G. C., taken in connection with the provisions of Sections 7644 and 7646 G. C., the board of education of a rural school district has authority, in the exercise of its discretion, to transfer all the pupils in any grade from one subdistrict school to an adjoining subdistrict school *within said rural district* by giving sufficient notice to said pupils of such assignment, subject, however, to the provisions of the first part of Section 7731, G. C., and to the further provisions of Section 7735 G. C. If, however, said board of education, acting under authority of Section 7731 G. C., provides transportation for all of the pupils affected by such order of assignment, said pupils may not exercise the right conferred by the provisions of section 7735 G. C. Op. Atty. Gen. (1915), p. 2107.

This section does not impose a duty upon the board of education of a school district to provide for a high school therein, and a county board of education has no right under Section 7610-1 G. C., 107 O. L. 623, to establish a high school in a village school district, where the village board of education refuses to do so. Op. Atty. Gen. (1917), p. 1640.

Under the provisions of G. C. Sec. 7644, it is a mandatory duty of a district board of education to continue the elementary schools for at least thirty-two weeks in a school year. Op. Atty. Gen. (1920), p. 873.

Educational facilities for children of compulsory school age, confined in tuberculosis hospitals, should be provided by the authorities in charge of such institutions. Op. Atty. Gen. No. 2549, Nov. 5, 1921.

See opinions of Attorney General (1916), p. 1471, cited under Sec. 7735.

Tuberculosis schools.

SECTION 7644-I. The board of education in any city school district may establish such special elementary schools as it deems necessary for youth of school age who are afflicted with tuberculosis, and may cause all youth, within such district, so afflicted, to be excluded from the regular elementary schools, and may provide for and pay from the school funds, the expense of transportation of such youth to and from such special schools.

HISTORY.—101 v. 319.

Graded course of study must be prescribed.

SECTION 7645. Boards of education are required to prescribe a graded course of study for all schools under their control in the branches named in section 7648, subject to the approval of the superintendent of public instruction. The course of study mentioned in this section shall include American government and citizenship in the seventh and eighth grades. As an additional study the subject of thrift shall be taught for at least thirty minutes each week in each grade of the elementary and high schools of the state. The superintendent of public instruction shall prepare an outline for a course of study in thrift for both the elementary and the high schools of the state.

HISTORY.—R. S. § 4007; 75 v. 513, § 50; 95 v. 115; 97 v. 358; 99 v. 85; 104 v. 225 (228); 108 v. Pt. I 642; 108 v. Pt. II 1283.

Under the provisions of G. C. Sec. 7645 (108 O. L., 1283), all boards of education are required to prescribe a graded course of study for all schools under their control in the branches named in G. C. Sec. 7648, but such courses of study are subject to the approval of the superintendent of public instruction. Op. Atty. Gen. (1920), p. 1053.

In the prescribing of a course of study for its school district, as provided in section 7645 G. C., a board of education is authorized to direct the superintendent employed by the board to formulate or submit to the board a course of study which will conform to the text books adopted by the board of education for use in that district.

A board of education has the power to adopt the necessary rules and regulations for the government of the schools and the employes of the board and for enforcing the rules and regulations thus adopted, and a board of education is authorized to direct that the superintendent employed by the board shall formulate final examination questions based upon the text books adopted by the board and used by the pupils in the district.

Text books for use in schools are adopted by the local board of education in accordance with section 7713 G. C. and the



board of education is required to prescribe a graded course of study for all the schools under its control under authority of section 7645 G. C., but such course of study is subject to the approval of the superintendent of public instruction. Op. Atty. Gen., Sept. 3, 1921, No. 2392.

See opinions of Attorney General (1919), p. 1043, cited under Sec. 7762-1.

SECTION 7646. The board of education of each rural school district shall establish and maintain at least one elementary school in each subdistrict under its control, unless transportation is furnished to the pupils thereof as provided by law.

Elementary school shall be maintained.

HISTORY.—R. S. § 4007; 75 v. 513, § 50; 95 v. 115; 97 v. 358; 99 v. 85; 104 v. 225 (228).

Under the provisions of Section 7684 G. C., taken in connection with the provisions of Sections 7644 and 7646 G. C., the board of education of a rural school district has authority, in the exercise of its discretion, to transfer all the pupils in any grade from one subdistrict school to an adjoining subdistrict school within said rural district by giving sufficient notice to said pupils of such assignment, subject, however, to the provisions of the first part of Section 7731 G. C., and to the further provisions of Section 7735 G. C. If, however, said board of education, acting under authority of Section 7731 G. C. provides transportation for all of the pupils affected by such order of assignment said pupils may not exercise the right conferred by the provisions of section 7735 G. C. Op. Atty. Gen. (1915), p. 2107.

The provisions of the first part of Section 7731 G. C., as amended in 104 O. L., 140, taken in connection with the provisions of Section 7646 G. C., as amended in 104 O. L. 228, makes it the duty of the board of education of a rural school district to provide transportation for those pupils residing in that part of said rural district formerly known as a subdistrict of said rural school district, and living more than two miles from the school maintained by said board of education in said part of said rural school district. Op. Atty. Gen. (1915), p. 2398.

SECTION 7647. The board of education in any city school district may establish and maintain a normal school within its district, and also establish and maintain such summer or vacation schools, school gardening and play grounds as to it seems desirable.

Normal school.

HISTORY.—R. S. § 4007; 75 v. 513, § 50; 95 v. 115; 97 v. 358; 99 v. 85.

SECTION 7647-I. The board of education of any school district may establish and maintain part-time schools or classes for the further education of children who are employed on age and schooling certificates. Such schools and classes shall be conducted not fewer than four hours per week while in session, and for not fewer than one hundred forty-four hours per calendar year between the hours of seven in the morning and six in the afternoon, excluding Saturday afternoon and Sunday. Such schools and classes shall be conducted under such standards as the superintendent of public instruction may prescribe. Boards of education shall have power to provide for the expense of such schools and classes the same as for the expense of ordinary elementary schools.

Maintenance of part time schools or classes; how conducted; expenses.

HISTORY.—109 v. 376.

Elementary  
school  
defined.

SECTION 7648. An elementary school is one in which instruction and training are given in spelling, reading, writing, arithmetic, English language, English grammar and composition, geography, history of the United States, including civil government, physiology and hygiene. Nothing herein shall abridge the power of boards of education to cause instruction and training to be given in vocal music, drawing, elementary algebra, the elements of agriculture and other branches which they deem advisable for the best interests of the schools under their charge.

HISTORY.—R. S. § 4007-1; 95 v. 115; 97 v. 359.

The board of education of a city school district may establish and maintain an elementary school in the general city hospital and contract with a teacher to give instruction in the branches mentioned in Section 7648 G. C., to children who are residents of said city district and who are confined in said hospital. Op. Atty. Gen. (1916), p. 122.

Sections 7762-1 and 7762-2 of the General Code which become effective in September, 1919, contain no provisions which prohibit catechetical instructions in the German language in Sunday Schools conducted by religious denominations.

A summer school which is held when another term of school is not in session is governed by the same laws which govern the regular term or session of school.

The German language shall not be taught below the eighth grade in any of the elementary schools, private or parochial schools, or schools maintained in connection with benevolent or correctional institutions in this state. Op. Atty. Gen. (1919), p. 676.

See Opinions of Attorney General (1919), p. 1043, cited under Sec. 7762-1.

High school  
defined.

SECTION 7649. A high school is one of higher grade than an elementary school, in which instruction and training are given in approved courses in the history of the United States and other countries; composition, rhetoric, English and American literature; algebra and geometry; natural science, political or mental science, ancient or modern foreign languages, or both, commercial and industrial branches, or such of the branches named as the length of its curriculum makes possible. Also such other branches of higher grade than those to be taught in the elementary schools, with such advanced studies and advanced reviews of the common branches as the board of education directs.

HISTORY.—R. S. § 4007-2; 95 v. 115.

A high school diploma is not legal which is granted to a person who was never a member of the high school which granted the diploma and if the person had never performed the work required by the curriculum of the said high school, or any part of it, or its equivalent, and never did any regular school work beyond the grade schools. Op. Atty. Gen. (1914), p. 1259.

All courses of study in high schools must be in compliance with Section 7649 G. C.

A pupil cannot be discriminated against in his general standing in school because he does not join a military unit in such school. Op. Atty. Gen. (1919), p. 653.

A county board of education has no right under Section 7610-1 G. C. (197 O. L. 623) to establish a high school in a village district, when the village board of education refuses to do so. Op. Atty. Gen. (1917), p. 1640.

See Opinions of Attorney General (1919), p. 947, cited under Sec. 7821.

SECTION 7650. A college is a school of a higher grade than a high school, in which instruction in the high school branches is carried beyond the scope of the high school and other advanced studies are pursued, or a school in which special, technical or professional studies are pursued, and which, when legally organized, may have the right to confer degrees in agreement with the terms of the law regulating its practices or its charter; or in the absence of legislative direction, in agreement with the practices of the better institutions of learning of their respective kinds in the United States.

College defined.

HISTORY.—R. S. § 4007-3; 95 v. 115.

SECTION 7651. The high schools of the state shall be classified into schools of the first, second and third grades. The superintendent of public instruction shall formulate standards under which the high schools of the state shall be administered. The superintendent of public instruction shall formulate a policy for the recognition of intermediate schools (junior high schools) and for public schools dividing their course as follows: six years elementary, three years intermediate and three years high school. Graduates of intermediate schools shall be given such high school credit as the superintendent of public instruction may direct.

High schools classified; formulation of standards and policies.

HISTORY.—R. S. § 4007-4; 95 v. 116; 107 v. 621 (624).

SECTION 7652. A high school of the first grade shall be a school in which the courses offered cover a period of not less than four years, of not less than thirty-two weeks each, in which not less than sixteen courses are required for graduation.

First grade.

HISTORY.—R. S. § 4007-4; 95 v. 116.

See opinions of Attorney General No. 1904 (1921), cited under Sec. 1303-1.

SECTION 7653. A high school of the second grade shall cover a period of not less than three years, of not less than thirty-two weeks each, in which not less than twelve courses of study are required for graduation.

Second grade.

HISTORY.—R. S. § 4007-4; 95 v. 116.

SECTION 7654. A high school of the third grade shall cover a period of not less than two years, of not less than twenty-eight weeks each, in which not less than eight courses of study are required for graduation.

Third grade.

HISTORY.—R. S. § 4007-4; 95 v. 116.

SECTION 7654-I. A county normal school may be established by a county board of education, with the approval of the superintendent of public instruction in any school district of the county which maintains a first grade high school, provided the board of education of the city, exempted village, village or rural school district in which the county normal school is proposed to be established agrees by resolution to furnish rooms, seats, heat, light, janitor service and,

County normal schools; furniture, supplies and equipment.



as far as possible, opportunities for practice teaching and observation necessary for the school.

Joint  
county normal  
schools.

Two or more county boards of education may establish a joint county normal school under like conditions, in which case the expense to be borne by the county boards of education shall be apportioned as agreed between them.

County and city boards of education, or county and exempted village boards of education may establish joint county normal schools under like conditions, in which case the expense of such a school ordinarily borne by the county board of education shall be apportioned as agreed between them.

Supplies and  
equipment,  
payment of  
expense.

The county board of education shall furnish such supplies, such equipment and such furniture as are not otherwise furnished. The expense thereof shall be paid by the county board of education from its contingent fund.

HISTORY.—104 v. 155; 108 v. Pt. I 233; 109 v. 591.

A board of education which maintains no high school is liable for tuition of a high school pupil who attends high school in a district other than in the district of the residence of such pupil, due notice in writing being given to the clerk of the board of education wherein said pupil resides of the name and the school to be attended and the date the attendance is to begin, even if such pupil at the same time attends the normal department of such high school in addition to the regular high school attendance. Op. Atty. Gen. (1918), p. 24.

One year  
course for  
teachers; en-  
trance re-  
quirements.

SECTION 7654-2. Each county normal school shall offer a one-year course for the preparation of teachers. The entrance requirements to such schools shall be fixed by the superintendent of public instruction. Such schools shall be open without tuition charge to all qualified residents of the state.

HISTORY.—104 v. 155 (156); 108 v. Pt. I 233 (234); 109 v. 591.

Employment  
of director  
and assistant.

SECTION 7654-3. A director and with the approval of the superintendent of public instruction, an assistant or assistants shall be employed for each county normal school. Such director and assistants shall be employed by the county board of education upon nomination of the county superintendent with approval of the superintendent of public instruction.

HISTORY.—104 v. 155 (156); 108 v. Pt. I 233 (234); 109 v. 591.

Practice  
teaching  
classes shall  
be maintained.

SECTION 7654-4. Each county normal school shall maintain practice teaching classes and shall be authorized to arrange with different boards of education for observation and practice teaching privileges in the schools under their control.

HISTORY.—104 v. 155 (156); 108 v. Pt. I 233 (234); 109 v. 591.

Salary of  
director and  
assistants,  
how fixed.

SECTION 7654-5. The county boards of education of the counties in which such county normal schools are located shall, with the approval of the superintendent of public instruction, fix the salaries of the directors and assistants and shall receive annually from the state fifteen hundred dollars

to be applied to the payment of the salary of each director, one thousand dollars to be applied to the payment of the salary of each assistant or the amount of each such salary if less than twelve hundred dollars, and not to exceed two hundred dollars for each school to be used for such other expenses and improvements of the county normal school as may be directed by the superintendent of public instruction. All expense in excess thereof, not paid by the local board of education, shall be paid by the county board of education from its contingent fund, and if there be a joint county normal school the amount apportioned to the other participating boards shall be paid by them to the county board of education of the county in which the normal school is located and placed in its contingent fund to be paid out for the specific purpose.

HISTORY.—104 v. 155 (156); 108 v. Pt. I 233 (234); 109 v. 592.

SECTION 7654-5a. Each state normal school shall maintain a curriculum which shall be supplementary to the curriculum of the county normal schools of the state, so that attendance with successful pursuit of the work in the state normal school shall enable a graduate of a county normal school who is a graduate of a first grade high school to secure in a year of not more than thirty-eight weeks in length, a diploma of graduation from a standard two-year normal course.

HISTORY.—109 v. 592.

SECTION 7654-6. There shall be established in the college of education of the Ohio State University and in each of the normal schools and colleges which are maintained either wholly or in part by state funds, a department of efficiency tests and survey. Such departments shall at the request of the superintendent of public instruction assist him in working out efficiency methods in school administration, and in conducting co-operative school surveys.

HISTORY.—104 v. 155 (156).

SECTION 7654-7. Each of the state normal schools at Athens, Oxford, Bowling Green, and Kent shall be authorized to arrange with boards of education of rural districts to assume the management of one-teacher rural schools, or of rural schools having two or more teachers, or both types of rural schools and to maintain such schools as model rural schools. In no case shall there be more than one of each type of such rural schools established in a rural school district nor more than six model rural schools established by any state normal school. Each state normal school which complies with the provisions of this section subject to the approval of the superintendent of public instruction shall receive five hundred dollars annually from the state for each class room of such model schools when vouchers therefor have been approved by the superintendent of public instruction and each of said normal schools shall also be authorized to arrange with the boards of education of vil-

State normal school shall maintain a curriculum.

Department of efficiency tests and survey by O. S. U. and other schools and colleges supported by the state.

State normal schools to maintain modern rural schools.

lage and city school districts to assume the management of all the schools of the district or districts or such part of them as may be necessary to provide adequate facilities for practice teaching by the students of said normal school, and providing the number of rooms for which such appropriation is made does not exceed six for each state normal school.

HISTORY.—104 v. 155 (156); 107 v. 627.

A board of education of a city school district may assign the youth of such district to the various schools located therein and may arrange with the trustees of a state normal college to assume the management of certain schools of such district, not to exceed six rooms thereof. Op. Atty. Gen. (1917), p. 1938.

The boards of trustees of the several state normal schools mentioned in Section 7654-7, General Code, are the proper custodians of the moneys paid by the state for model rural schools pursuant to said section. Said moneys should be disbursed upon the approval of said boards of trustees, and not otherwise. Primarily, such moneys should be applied to maintenance of said model schools, but any excess remaining after such purpose is satisfied may be disposed of for such other school purposes as the boards of trustees of said state normal schools think proper. Op. Atty. Gen. (1920), p. 283.

Elementary grade.

SECTION 7655. Public schools of a less grade shall be denominated as elementary schools. A course of study shall consist of not less than four recitations a week continued throughout the school year.

HISTORY.—R. S. § 4007-4; 95 v. 116.

What constitutes elementary rural school of second grade.

SECTION 7655-1. Every one room school in any rural school district where the school house and outbuildings are kept in proper condition and repair, buildings and yard clean, and separate screened privies are maintained for each sex, shall be considered a rural elementary school of the second grade.

HISTORY.—104 v. 125 (127).

What constitutes rural elementary school of first grade.

SECTION 7655-2. Each one room school in any rural school district which shall fulfill the requirements of this section shall be considered a rural elementary school of the first grade. Such requirements are as follows:

- (a) Clean buildings and yard.
- (b) Building in good repair.
- (c) Separate screened privies for each sex or inside toilets.
- (d) Maps of Ohio and United States.
- (e) Library of not less than 50 volumes.
- (f) 100 square feet of slate or composition black-board. The lower margin of not less than twelve lineal feet of which board, shall be within two feet of the floor.
- (g) A system of heating with ventilation—minimum a jacketed stove.
- (h) Buildings hereafter constructed to have in connection with them not less than one acre of land for organized play.



- (i) Teacher with at least a three-year certificate.
- (j) Agricultural apparatus to a value of at least fifteen dollars.

HISTORY.—104 v. 125 (127).

SECTION 7655-3. Each consolidated school in any village or rural school district which shall fulfill the requirements of this section shall be considered a consolidated elementary school of the second grade. Such requirements are as follows:

What constitutes consolidated elementary school of second grade.

- (a) Clean building and yard.
- (b) Building in good repair.
- (c) Separate screened privies for each sex or inside toilets.
- (d) Library of not less than 100 volumes.
- (e) 100 square feet of slate or composition blackboard. The lower margin of not less than twelve lineal feet of which board, shall be within two feet of the floor.
- (f) A system of heating with ventilation—minimum a jacketed stove.
- (g) Buildings hereafter constructed to have at least two acres of land for organized play and agricultural experiment.
- (h) At least two rooms and two teachers on full time one of whom must have at least a three-year certificate.
- (i) One teacher to be employed for ten months each year giving part of his or her time during the school year to the teaching of agriculture or domestic science or both and during part of vacation supervise agricultural work of boys and domestic art work of the girls.
- (j) Agricultural apparatus to the value of at least twenty-five dollars.
- (k) A case of not less than six maps including a map of Ohio.

HISTORY.—104 v. 125 (127).

SECTION 7655-4. Each consolidated school in any village or rural school district which shall fulfill the requirements of this section shall be considered a consolidated elementary school of the first grade. Such requirements are as follows:

What constitutes consolidated elementary school of first grade.

- (a) Clean building and yard.
- (b) Building in good repair.
- (c) Separate screened privies for each sex, or inside toilets.
- (d) A case of not less than six maps including a map of Ohio.
- (e) Library of not less than 150 volumes.
- (f) 100 square feet of slate or composition blackboard. The lower margin of not less than twelve lineal feet of which board, shall be within two feet of the floor.
- [(g)] (f) A system of heating with ventilation—minimum a jacketed stove.

(h) Buildings hereafter constructed to have at least three acres of land in connection with each school one for agriculture and school garden purposes.

(i) Three rooms and three teachers or more on full time, one teacher to have at least a three-year certificate.

(j) A course in domestic science.

(k) Two teachers to be employed for ten months each, one teaching agriculture during the school term and to supervise agriculture during part of the vacation. The other to teach domestic science during the school term and to supervise domestic science instruction during part of the vacation.

(l) Agricultural and domestic science apparatus to (to) the value of at least one hundred dollars.

HISTORY.—104 v. 125 (128).

Who admitted  
to any high  
school without  
examination.

SECTION 7655-7. The holder of a certificate of graduation from any one-room rural school of the first grade or of any consolidated rural school which has been recognized shall be entitled to admission to any high school without examination. Graduates of any elementary school shall be admitted to any high school without examination on the certificate of the county superintendent or assistant county superintendent.

HISTORY.—104 v. 125 (129); 109 v. 244.

See Opinions of Attorney General No. 2324 (1921), cited under Sec. 7690.

Metal placard  
showing grade  
of rural  
school.

SECTION 7655-8. The superintendent of public instruction shall furnish the boards of education in the village and rural school districts metal placards which shall be placed on the various school buildings showing the grades of such schools.

HISTORY.—104 v. 125 (129).

Diploma  
granted to  
graduates.

SECTION 7656. A diploma must be granted by the board of education to any one completing the curriculum in any high school, which diploma shall state the grade of the high school issuing it as certified by the superintendent of public instruction, be signed by the president and clerk of the board of education, the superintendent and the principal of the high school, if such there be, and shall bear the date of its issue.

HISTORY.—R. S. § 4007-5; 95 v. 116; 104 v. 225 (229).

A high school diploma is not legal which is granted to a person who was never a member of the high school which granted the diploma and if the person had never performed the work required by the curriculum of the said high school, or any part of it, or its equivalent, and never did any regular school work beyond the grade schools. Op. Atty. Gen. (1914), p. 1259.

A pupil who completes the course of study prescribed by the board of education is considered a graduate even though his diploma has been withheld from him and the board of education of such pupil's residence must pay his tuition at a high school the same as though he had received said diploma.

A diploma must be granted to any one who completes the curriculum in any high school.

The statute which required a pupil to deliver an oration or declamation, or read an essay at a commencement exercise before such pupil was entitled to a certificate of graduation, has been repealed.

If the board of education has included in its course of study the writing of a thesis and a pupil refuses to write such thesis, the said pupil is not a graduate of such school and is not entitled to his diploma. Op. Atty. Gen. (1918), p. 1327.

SECTION 7657. A certificate shall also be issued to the holder of each diploma in which shall be stated the grade of the high school, the names and extent of the studies pursued and the length of time given to each study to be certified to in the same manner as set forth for a diploma.

Certificate as to grade of school.

HISTORY.—R. S. § 4007-5; 95 v. 116.

SECTION 7658. A holder of a diploma from a high school of the first grade may be admitted without examination to any college of law, medicine, dentistry, or pharmacy in this state, when the holder thereof has completed such courses in science and language as are prescribed by the legally constituted authorities regulating the entrance requirements of such college; except such institutions privately endowed which may require a higher standard for entrance examinations than herein is provided. After September 1, 1915, the holder of a diploma from a first grade high school shall be entitled to admission without examination to the academic department of any college or university which is supported wholly or in part by the state.

Admission to professional school, college or university.

HISTORY.—R. S. § 4007-5; 95 v. 116; 104 v. 125.

A person holding a diploma from a first grade high school is entitled to admission without condition to the academic department of any college or university supported in whole or in part by the state in which institution is maintained a teachers' training or normal school. Op. Atty. Gen. (1916), p. 1969.

See Opinions of Attorney General No. 1904 (1921), cited under Sec. 1303-1.

SECTION 7659. A holder of a diploma from any grade of high school or of a teacher's certificate from a county or city board of teachers' examiners, when he has pursued his studies under private tutorage or in an office, shall be eligible to take the examination for admission to the practice of law or to take the examination prescribed to enter a college of law, medicine, dentistry or pharmacy; except such institutions privately endowed, which may require a higher standard for entrance examinations than herein is provided.

Who eligible to take examination for admission to bar or to enter professional school; exception.

HISTORY.—R. S. § 4007-5; 95 v. 116.

SECTION 7660. The clerk of the board of education of each district in which a high school is established and maintained shall furnish to the superintendent of public instruction definite and accurate information concerning the length of time necessary for the completion of the high school curriculum or curriculums, the courses of instruction offered

Information to superintendent of public instruction as to high schools.



therein, and such other information as the superintendent of public instruction requires in relation to the high school work of the district, and in the form and manner he prescribes. Such information shall be filed when high schools are established or any changes made in curriculums.

HISTORY.—R. S. § 4007-6; 95 v. 117; 104 v. 225 (229).

Held that Ohio University is not authorized to establish a school, although it may be designated a high school, and have its standard fixed by the superintendent of public instruction as a high school and receive a certificate from him as to the standard of such school.

This school so established by the Ohio University not being a part of the public school system of the state, the teachers therein would not be required to hold teachers' certificates before being qualified to teach. Op. Atty. Gen. (1917), p. 2394.

Certificate as to grade of high school; withholding approval.

SECTION 7661. Upon examination of the information thus filed, or after personal inspection of work done if he deems this advisable, or both, the superintendent of public instruction shall determine the grade of each such high school and, under the seal of his office, certify to the clerk of the board of education his finding as to the grade of the high school maintained by such board. But he may withhold his approval of any curriculum, when it appears to him that it does not comply with legal and reasonable requirements. When it appears that any curriculum, already approved, has been so modified as to change the grade of the high school, either by advancing or reducing its grade, the superintendent of public instruction shall certify his finding and all diplomas issued thereafter shall bear the grade so designated by him.

HISTORY.—R. S. § 4007-6; 95 v. 117; 104 v. 225 (229).

See Opinions of Attorney General No. 1904 (1921), cited under Sec. 1303-1.

Penalty for failure to give information.

SECTION 7662. No school shall be considered a high school that has not furnished the information and received a certificate as provided above, nor be entitled to the privileges and exceptions provided by law for high schools.

HISTORY.—R. S. § 4007-6; 95 v. 117.

Any board of education may establish high school.

SECTION 7663. A board of education may establish one or more high schools, whenever it deems the establishment of such school or schools proper or necessary for the convenience or progress of the pupils attending them, or for the conduct and welfare of the educational interests of the district.

HISTORY.—R. S. § 4009; 75 v. 513, § 50; 79 v. 37; 95 v. 117.

The provisions of this section together with those of Sections 7748, 7750 and 7751, General Code, were considered by the court in the case of State ex rel. vs. Bushnell, 95 O. S. 203, where it was held that the board of education of a village school district not maintaining a high school, was not required to pay the tuition of pupils resident therein who attended high school elsewhere.

A board of education of the school district is not required by the provisions of this section to establish a high school therein, and a county board of education has no right under Section

7610-1 G. C., 107 O. L. 623, to establish a high school in a village school district when the village board of education refuses to do so. Op. Atty. Gen. (1917), p. 1640.

See opinions of Attorney General, No. 2949 (1922), cited under Sec. 7749.

SECTION 7664. Such school or schools, when established, shall not be discontinued under three years from the time of their establishment, except by a vote of three-fourths of all the members of the board of education of the district, at a regular meeting.

Discontinuance thereof.

HISTORY.—R. S. § 4009; 75 v. 513, § 50; 79 v. 37; 95 v. 117.

SECTION 7665. When a township board of education establishes and maintains a high school or high schools within the district under its control, it shall have the management and control thereof, and may employ and dismiss teachers, and give certificates of such employment, and for services rendered, directed to the township clerk.

Management and control of township high schools.

HISTORY.—R. S. § 4009-1; 88 v. 484, § 1; 95 v. 117, § 4009-1.

SECTION 7666. Such board of education shall build, repair, add to and furnish the necessary schoolhouses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as may be deemed proper.

School-houses.

HISTORY.—R. S. § 4009-1; 88 v. 484, § 1; 95 v. 117, § 4009-1.

SECTION 7667. Such board of education may regulate and control the admission of pupils from the elementary schools under its charge to such high school or high schools, according to age and attainments, may admit adults over twenty-one years of age, and pupils from other districts on such terms and under such rules as it adopts. It shall maintain such high school or high schools not less than twenty-eight nor more than forty weeks in any school year.

Admission of pupils.

HISTORY.—R. S. § 4009-1; 88 v. 484, § 1; 95 v. 117, § 4009-1.

A city board of education may establish and maintain vocational schools to which adults may be admitted and may erect and equip suitable buildings or set apart and use buildings under the control of the board of education for such purposes in the same manner and within the same limitations as it establishes and maintains buildings for other school purposes. However, said schools should not be established for the exclusive use of adult pupils, but rather for all who are eligible to attend. Op. Atty. Gen. 1920, p. 539.

See Opinions of Attorney General (1920), p. 751, cited under Sec. 7787.

SECTION 7668. In rural districts where a high school or high schools are, or may be established, by the rural board of education, it annually shall determine by estimate, as near as practicable, the entire amount of money necessary to be expended in the rural district for school and school-house purposes, including the paying of teachers in such schools the prolonging of the terms of the several elementary schools of the rural district after the state funds have

Estimate of funds needed, certified to county auditor.

been exhausted, the erecting, repairing and furnishing of schoolhouses, and any other school purposes which amount shall be certified in writing to the county auditor, by such rural board, on or before the first Monday in June of each year.

HISTORY.—R. S. § 4009-2; 88 v. 484, § 2; 95 v. 117; 104 v. 225 (229).

Union of districts for high school purposes; tax levy; submission of question.

SECTION 7669. The boards of education of two or more adjoining school districts, by a majority vote of the full membership of each board, may unite such districts for high school purposes. Each board also may submit the question of levying a tax on the property in their respective districts for the purpose of purchasing a site and erecting a building, and issue bonds, as is provided by law in case of erecting or repairing school houses; but such question of tax levy must carry in each district before it shall become operative in either. If such boards have sufficient money in the treasury to purchase a site and erect such building, or if there is a suitable building in either district owned by the board of education that can be used for a high school building it will not be necessary to submit the proposition to vote, and the boards may appropriate money from their funds for this purpose.

HISTORY.—R. S. § 4009-15; 93 v. 281; 95 v. 443; 97 v. 359; 99 v. 462, § 1; 104 v. 225 (229); 107 v. 621 (624); 109 v. 373.

In the case of *State ex rel. vs. School District, 20 O. C. C. (N. S.) 423 (Aff. 76 O. S., 637)* it was held that an earlier form of this section was not subject to any constitutional infirmity, and that a township board of education may be compelled to appropriate its proportionate share of the expense of the maintenance of a joint township high school; and that if such township board fails to make the required levy for this purpose, application for relief should be made to the county commissioners under section 7610, General Code.

There is no provision of statute whereby joint high school districts may be dissolved. *Op. Atty. Gen. (1914), p. 1495.*

The boards of education of two adjoining village school districts have no authority in law to unite said village school districts for high school purposes. *Op. Atty. Gen. (1916), p. 554.*

The question of issuing bonds for the purpose of purchasing a site and erecting a high school building, as authorized by section 7669 G. C., may be submitted at a special election called for that purpose or at a regular or general election.

When the question of issuing bonds is submitted pursuant to Sections 7669 and 7625 G. C., it is not required that in addition thereto there shall be submitted the question of levying an additional tax for high school purposes pursuant to section 5649-5 and 5649-5a G. C.

Bonds authorized by Section 7669 G. C., to be issued for the purpose of purchasing a site and erecting a high school building, must be issued by each district separately and issue must be approved by a majority of the electors voting thereon in each district in which the question is submitted.

A site should be purchased and a high school building erected by the boards of education of the several united districts. *Op. Atty. Gen. (1916), p. 1100.*

A village school district and an adjoining rural school district uniting for high school purposes under Section 7669 of the General Code may issue bonds under said section on a vote of the electors of the respective school districts in the manner provided by Sections 7625, 7626 and 7627 of the General Code for the purpose of erecting



a high school building for the joint high school district. Such separate issue of bonds by a vote of such school district so united for high school purposes will be in compliance with the provisions of said section 7669 which requires the submission of the question of levying a tax on the property in the respective districts so joined. *Op. Atty. Gen. (1917), p. 247.*

Where districts are united for high school purposes, that act alone does not unite such districts for supervision purposes. *Op. Atty. Gen. (1918), p. 735.*

When a joint high school district is formed for high school purposes by a rural school district and an adjoining village school district, such combined territory becomes one district for high school purposes, and taxes levied for the purchase of a school site and erection of a school building, and the support of such high school thereafter must be borne by the respective joined districts in proportion to the total valuation of taxable property in each, notwithstanding the fact that the village district has the smallest tax duplicate valuation and sends the most pupils. *Op. Atty. Gen. (1919), p. 483.*

SECTION 7670. Any high school so established shall be under the management of a high school committee, consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards. Their membership of such committee shall be for the same term as their terms on the boards which they respectively represent. Such high school shall be free to all youth of school age within each district, subject to the rules and regulations adopted by the high school committee, in regard to the qualifications in scholarship requisite for admission, such rules and regulations to be of uniform operation throughout each district.

High school  
committee.

HISTORY.—R. S. § 4009-15; 93 v. 281; 95 v. 443; 97 v. 359; 99 v. 462, § 1.

With the exception of the power reserved by the provisions of Section 7672 G. C., to the board of education of each of the school districts comprising the union for high school purposes, to levy a tax and set aside the proceeds of such levy as a separate fund for the maintenance of said high school, the joint high school committee when properly elected under authority and in compliance with the requirement of Section 7670 G. C., exercises the same powers and performs the same duties in connection with said high school as are exercised and performed by the board of education of a school district which maintains its own high school. *Op. Atty. Gen. (1916), p. 772.*

Held on consideration of the provisions of this section and those of Section 7671 G. C., that the only authority conferred upon the high school committee is that of managing the high school established by the boards of education and that the high school committee has no authority to purchase a site for and let a contract for the erection of a high school building thereon either with or without an attempted grant of authority to do so on the part of the respective boards of education; and that the title to the real estate secured for a site for the high school building should be taken in the name of the boards of both districts for the use of the joint district for high school purposes. *Op. Atty. Gen. (1917), p. 247.*

SECTION 7671. The funds for the maintenance and support of such high school shall be provided by appropriations from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts, which must be placed in a separate

Funds, how  
provided.

fund in the treasury of the board of education of the district in which the school house is located, and paid out by action of the high school committee for the maintenance of the school.

HISTORY.—R. S. § 4069-15; 93 v. 281; 95 v. 443; 97 v. 359; 99 v. 462, § 1.

Certification  
of teachers'  
payroll, etc.

SECTION 7671-1. In the case of every joint high school established and operating under the authority of sections 7669, 7670 and 7671, General Code, the county superintendent of schools shall certify on or before the first day of August of each year the teachers' payroll, the aggregate days of attendance, and the personal service item of transportation costs in connection with such high school to the county auditor, who shall distribute the apportionments on account of teachers' salaries, aggregate days of attendance, and transportation of pupils in such high school as provided for in section 7600, General Code, to the school district in which it is located. The clerk of the board of education of said district upon receipt of such distribution shall draw a warrant for the amount of the same, countersigned by the president of the board of education, in favor of the treasurer of the joint high school committee. The amount so received by the treasurer of the high school committee shall be credited on his books to the districts on the basis of the proportional enrollment in the joint high school from each of the districts participating in support of the same.

Distribution of  
apportionment  
on account of  
teachers' sal-  
aries.

HISTORY.—109 v. 373.

See opinions of Attorney General, No. 3114 (1922), cited under Sec. 7764.

Dissolution of  
union high  
school dis-  
tricts; pro-  
cedure.

SECTION 7671-2. Any union of districts for high school purposes as provided in sections 7669, 7670, 7671 and 7671-1, General Code, may be dissolved upon passage of resolutions by one or more of the boards of education of the school districts participating in such union demanding such dissolution, or upon failure of any one or more of the said boards of education to pay their proportion of the maintenance of the joint high school, provided that during the continuance of such union the obligations, financial and otherwise, involved in the acts of the joint high school committee shall be binding upon each and all of the participating districts. In the event of failure of the boards of education of the participating districts to agree upon the terms of dissolution of the union of districts referred to in the first part of this section, or when such boards of education fail, within sixty days from the time when dissolution has been resolved upon to effect a settlement of property interests and indebtedness involved in the establishment and maintenance of the joint high school in the case, the county board of education of the county in which such joint high school is located shall make such adjustments as may in its judgment be deemed equitable, and the terms of settlement fixed by the said county board of education shall be binding upon the several school districts concerned.

HISTORY.—109 v. 374.

SECTION 7672. Boards of education exercising control for the purpose of taxation over territory within a joint high school district shall determine by estimate the amount necessary for the maintenance of any joint school in such territory and shall certify such amount to the county auditor in the annual budget as provided in section 5649-3a, General Code. All funds derived from levies so made shall be kept separate and be paid out for the maintenance of the school for which they were made.

Certification to county auditor of estimates to maintain schools.

HISTORY.—R. S. § 4009-15; 93 v. 281; 95 v. 443; 97 v. 359; 99 v. 462, § 1; 104 v. 225 (230); 109 v. 374.

SECTION 7673. The school board of any village or rural school district or the joint boards of any union of districts for high school purposes, in which is located a university, college, or academy organized or existing under the laws of this state, as an institution of learning not for profit, and under the management of a board of trustees, or the board of any district adjoining that in which such institution is located, may levy a tax not exceeding two mills annually, upon all taxable property within such district for the support of such university, college or academy.

Tax levy for support of university in village, rural or union district.

HISTORY.—99 v. 519, § 1; 104 v. 225 (230); 107 v. 548.

See Opinions of Attorney General (1917), p. 2369, cited under Sec. 7991.

SECTION 7674. In the event such levy is made, all holders of a high school diploma obtained from such district high school shall have the right to attend such university or college for the period of two years, free of tuition, and all holders of a certificate from the eighth grade elementary schools of each district in which such tax is levied shall have the right to attend such academy for the period of four years, free of tuition.

Who shall have right to admission.

HISTORY.—99 v. 520, § 2; 107 v. 548.

See Opinions of Attorney General (1917), p. 2369, cited under Sec. 7991.

SECTION 7675. The funds arising from such tax levy shall be turned over to the board of trustees of such university college or academy by the county treasurer to be expended by them in the conduct of the university, college or academy and for no other purpose.

Disposition of funds.

HISTORY.—99 v. § 20, § 3; 104 v. 225 (230).

SECTION 7676. The inmates of a county, semi-public or district children's home shall have the advantage of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located. Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the city, township, village or special board of education, having jurisdiction over the school district within which such home is located. Such board of education shall employ with the

Inmates shall attend public schools.

Supervision of school at the home. Teachers and equipment.



approval of the superintendent of the home necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light.

HISTORY.—R. S. § 4010; 75 v. 513, § 50; 76 v. 75, § 1; 80 v. 217; 103 v. 864 (896); 107 v. 60 (61). This section as amended in 107 v. 60 (61), in effect July 1, 1917.

Acts relating to children's homes, see G. C. § 3077, et seq., also § 4083, et seq.

The board of education of a school district, in which is located a county detention home, established in conformity with section 1670 G. C., has authority to forbid the attendance of the inmates of the county detention home at the public schools of the district, since section 1670 G. C. provides that the superintendent and matron in a county detention home shall be persons "qualified as teachers of children". Op. Atty. Gen. No. 2492, Oct. 20, 1921.

See Opinions of Attorney General (1920), p. 751 cited under Sec. 7787.

Children shall be given elementary education.

SECTION 3088. Children of school age who are inmates of a county, semi-public or district children's home shall be given an elementary education after the manner described in section 7676.

HISTORY.—R. S. § 930b; 99 v. 186; 90 v. 192; 103 v. 864 (889); 107 v. 60 (61). The amendment in 107 v. 60 was in effect July 1, 1917.

See opinions of Attorney General as follows: No. 2492 (1921), cited under Sec. 7676; (1920), p. 751, cited under Sec. 7787.

Report to county auditor; contents.

SECTION 7677. On or about the first day of February and of August the superintendent of the school district in which the inmates of a county, semi-public or district children's home is located shall furnish the county auditor a detailed report showing the average per capita cost, of conducting a school at such home, or the average per capita cost, except for improvement and repairs, of all the elementary schools in such district in case such inmates attend such a school, for the preceding six months. Such report shall also give the names and former residence of all inmates in attendance at school, the duration of attendance, and such other information as the county auditor may require to carry out the provisions of the next section.

HISTORY.—R. S. § 4010; 75 v. 513, § 50; 76 v. 75, § 1; 80 v. 217; 103 v. 864 (896); 107 v. 60 (61). This section as amended in 107 v. 60 (61), in effect July 1, 1917.

See Opinions of Attorney General (1920), p. 751, cited under Sec. 7787.

Cost of educating inmate, how determined and how paid.

SECTION 7678. A child who is an inmate of a county, semi-public or district children's home and who was previously a resident of the school district in which such home is located shall be entitled to an education at the expense of such school district, but any child who was not a resident of such school district shall be educated at the expense of the school district of its last residence. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of its last residence. The county auditor upon receipt of the

above report from the board of education shall, before making a semi-annual distribution of taxes collected, estimate the amounts chargeable to the various school districts for tuition of inmates of such home, and shall transfer to the proper school funds such amounts. In case there are inmates from another county, the county auditor of the county in which the home is located shall certify the amount to the auditor of the county of such children's residence who shall forthwith issue his warrant on treasurer of the same county for such amount, and shall proceed to apportion the proper amounts to the various school districts of such county in the manner described above.

Inmates from another county.

HISTORY.—R. S. § 4010; 75 v. 513, § 50; 76 v. 75, § 1; 80 v. 217; 103 v. 864 (896); 107 v. 60 (61). This section as amended in 107 v. 60 (61), in effect July 1, 1917.

See Opinions of Attorney General (1920), p. 751, cited under Sec. 7787.

SECTION 7679. In any rural, village, exempted village, or city district, or part thereof, parents or guardians of youth of school age may petition the board of education to organize an evening school. The petition must contain the names of not less than twenty-five youth of school age who will attend such school, and who for reasons satisfactory to the board are prevented from attending day school. Upon receiving such petition the board of education shall furnish a suitable room for the evening school and employ a competent person who holds a regularly issued teacher's certificate to teach it. Such board may discontinue any such evening school when the average evening attendance for any month falls below twelve.

Organization evening schools; petition.

HISTORY.—S. & C. 1359; R. S. § 4012; 72 v. 29, § 51; 90 v. 116; 104 v. 225 (230); 109 v. 553.

SECTION 7680. Any person more than twenty-one years old may be permitted to attend evening school upon such terms and upon payment of such tuition as the board of education prescribes.

Attendance by person more than twenty-one years old.

HISTORY.—R. S. § 4012a; 90 v. 117.

SECTION 7681. The schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district, but the time in the school year at which beginners may enter upon the first year's work of the elementary schools shall be subject to the rules and regulations of the local boards of education. Inmates of the proper age of county, semi-public and district children's homes shall be admitted after the manner described in section 7676. The board of education may admit the inmates of a private children's home or orphan asylum located in the district, with or without the payment of tuition fees, as may be agreed upon; provided any child who is an inmate of such a home or asylum and previous to admission was a resident of the school district in which such home or asylum is located shall be entitled to free education; and provided, any

Who may be admitted to schools free; when tuition may or shall be charged and collected.

such inmate who attends the public schools was prior to admission to such home or asylum a resident of another school district of the state of Ohio and a tuition fee is charged, the same method of reimbursement shall be followed as is provided in sections 7677 and 7678; and provided further, for any such inmate who attends the public schools and who prior to admission to such home or asylum was not a resident of the state of Ohio, such home or asylum shall pay from its own funds such tuition as may be agreed upon. But all youth of school age living apart from their parents or guardians and who work to support themselves by their own labor, shall be entitled to attend school free in the district in which they are employed.

HISTORY.—R. S. § 4013; 70 v. 195, § 71; 77 v. 196; 84 v. 69; 87 v. 317; 97 v. 360; 102 v. 48; 103 v. 864 (897); 106 v. 489; 107 v. 60 (62). This section as amended in 107 v. 60 (62), in effect July 1, 1917.

On a consideration of this and other sections of the General Code, it was held that a refusal by a board of education to permit a pupil who had successfully passed to the next higher grade to omit such grade and pass to a still higher one was not a violation of the rights of such pupil. Board of Education vs. State, 80 O. S., 133.

The phrase "actual residents of the district" occurring within the provisions of section 7681 G. C. requires an actual residence in fact, or the physical presence and dwelling of the parent or person standing in *loco parentis* to the pupil, for the time being at least, within the school district.

The school residence required by section 7681 G. C. and the voting residence required by section 4866 G. C. are not identical. Op. Atty. Gen. No. 2817, Jan 24, 1922.

Section 7681 G. C. provides that the schools of each district shall be free to all resident youth of the district between the ages of six and twenty-one, no distinction being made as to sex, nor as to graduation or other condition.

Married infant females under the age of twenty-one may attend the schools of the district of which they are residents, but may not be compelled to do so under compulsory school law, though within compulsory school age. Op. Atty. Gen. No. 2495, Oct. 24, 1921.

See Opinions of Attorney General as follows: (1918, p. 927, cited under Sec. 7684. No. 2492 (1921), cited under Sec. 7676. (1920), p. 751, cited under Sec. 7787.

Non-resident pupils admitted on payment of tuition.

SECTION 7682. Each board of education may admit other persons upon such terms or upon the payment of such tuition within the limitations of other sections of law as it prescribes. Notwithstanding the provisions of section 7603, General Code, money received for tuition shall in all cases upon its receipt be placed in the tuition fund.

HISTORY.—R. S. § 4013; 70 v. 195, § 71; 77 v. 196; 84 v. 69; 87 v. 317; 97 v. 360; 109 v. 375.

This section applies to the admission to a high school in a city district of a pupil residing in a village district, but does not require the board of education of the village district to pay the tuition of such pupil. State vs. Bushnell, 95 O. S., 203, 213.

See opinions of Attorney General, No. 3140 (1922), cited under Sec. 7690.

Crediting of school tax on tuition.

SECTION 7683. When a youth between the age of six and twenty-one years or his parent owns property in a school district in which he does not reside, and he attends



the schools of such district, the amount of school tax paid on such property shall be credited on his tuition.

HISTORY.—R. S. § 4013; 70 v. 195, § 71; 77 v. 196; 84 v. 69; 87 v. 317; 97 v. 360.

This section considered by court in the case of *State vs. Bushnell*, 95 O. S., 203, 214.

SECTION 7684. Boards of education may make such an assignment of the youth of their respective districts to the schools established by them as in their opinion best will promote the interests of education in their districts.

Assignment  
of pupils.

HISTORY.—R. S. § 4013; 70 v. 195, § 71; 77 v. 196; 84 v. 69; 87 v. 317; 97 v. 360.

A board of education has no authority to assign pupils to schools outside of the district over which such board has jurisdiction.

A board of education may contract under the provisions of section 7734 G. C. with another board of education for the admission of pupils into the schools of such other district and such contract is in effect an assignment of the pupils to such other district school.

The consent of parents is not required to make an effective assignment of the school youth of the school district to the various schools therein. *Op. Atty. Gen.* 1918, p. 927.

See *Opinions of Attorney General* (1916), p. 1471, cited under Sec. 7735.

SECTION 7685. No pupil shall be suspended from school by a superintendent or teacher except for such time as is necessary to convene the board of education, nor shall one be expelled except by a vote of two-thirds of such board, and after the parent or guardian of the offending pupil has been notified of the proposed expulsion, and permitted to be heard against it. No pupil shall be suspended or expelled from any school beyond the current term thereof.

Suspension  
and expulsion  
of pupils.

HISTORY.—R. S. § 4014; 89 v. 96; 70 v. 195, § 71.

The father of a child entitled to the benefits of a public school in the school district where he resides may maintain an action for damages for the wrongful expulsion of the child from school. *Roe vs. Deming*, 21 O. S., 666.

A pupil cannot be expelled from school, except in strict compliance with statutory provisions governing the subject; but where the procedure of the board is in compliance with such statutory provisions, the court will not interfere with the sound discretion of the school authorities. *Brown vs. Board of Education*, 6 O. N. P., 411.

Boards of education are authorized by law to adopt and enforce necessary rules and regulations for the government of the schools under their management and control. And where a rule of a board of education provided that if any pupil should fail to be prepared with a rhetorical exercise, at the time appointed therefor, he or she, unless excused on account of sickness, or other reasonable cause, be immediately suspended, it was held that such rule was reasonable and that neither the board of education nor the teacher was liable in damages for the suspension of a pupil for refusing to comply with this rule. *Sewell vs. Board of Education*, 29 O. S., 89.

SECTION 7686. The board of each district may make and enforce such rules and regulations to secure the vaccination of, and to prevent the spread of small-pox among the pupils attending or eligible to attend the schools of the

Vaccination  
of pupils.

district, as in its opinion the safety and interest of the public require. Boards of health, councils of municipal corporations, and the trustees of townships, on application of the board of education of the district, at the public expense, without delay, shall provide the means of vaccination to such pupils as are not provided therewith by their parents or guardians.

HISTORY.—R. S. § 3986; 69 v. 22, § 1.

The provisions of this section were held to be constitutional in the case of *State vs. Board of Education*, 76 O. S., 297.

This section confers authority on the board of education to make and enforce rules to secure vaccination to prevent the spread of smallpox. *State ex rel. vs. Barberton*, 19 O. C. D., 375; *Carr vs. Board of Education*, 1 O. N. P. (N. S.) 602; *State ex rel. vs. Board of Education*, 7 O. C. C. (N. S.) 608.

The exclusion of a child from school for failure to comply with the rule of the board of education requiring vaccination does not render the parent of such child liable under the compulsory education law. *State vs. Turney*, 12 O. C. C. (N. S.) 33.

As the board of education may exclude a child from the public school if not vaccinated, such exclusion is not an excuse for failure to provide an education for such child, and though the parents are not liable to prosecution under the compulsory education act, the child may be found to be "dependent" and the parents prosecuted under section 1654, General Code, for causing or contributing thereto. *In re Hargy*, 23 O. N. P. (N. S.) 129.

Dismissal of  
school on  
holidays.

SECTION 7687. Teachers in the public schools may dismiss their schools, without forfeiture of pay, on the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, the twenty-fifth of December, and on any day set apart by proclamation of the president of the United States, or the governor of this state as a day of fast, thanksgiving or mourning.

HISTORY.—R. S. § 4015; 70 v. 195, § 116; 83 v. 73; 97 v. 360.

For other holidays, see G. C. §§ 5976, et seq.

A teacher cannot be compelled to teach a number of extra days in lieu of holidays; and when he does so upon requirement of the board of education, cannot recover for such additional service. *Board of Education vs. Parker*, 1 App. 114, 21 O. C. C. (N. S.) 280.

Arbor day.

SECTION 7688. Not later than April the governor of the state shall appoint and set apart one day in the spring season of each year, as a day on which those in charge of the public schools and institutions of learning under state control, or state patronage, for at least two hours must give information to the pupils and students concerning the value and interest of forests, the duty of the public to protect the birds thereof, and also for planting forest trees. Such day shall be known as Arbor day.

HISTORY.—R. S. § 4015-1; 79 v. 243; 95 v. 38, § 1.

Temperance  
day in pub-  
lic schools;  
program.

SECTION 7688-1. The Friday nearest the sixteenth day of January of each year shall be set apart as a day on which those in charge of the public schools of the state shall spend at least two hours' time to carrying out a temperance day program as prepared by the superintendent of public in-

struction; information relative to the history of the temperance movement and of the physiological value of temperance shall be given the pupils. Such a day shall be known as temperance day.

HISTORY.—109 v. 587.

SECTION 7689. The school year shall begin on the first day of September of each year, and close on the thirty-first day of August of the succeeding year. A school week shall consist of five days, and a school month of four school weeks.

School year,  
month, and  
week.

HISTORY.—R. S. § 4016; 70 v. 215, § 70; 72 v. 181, § 6.

See Opinions of Attorney General (1917), p. 2441, cited under Sec. 7705.

SECTION 7690. Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries.

Control of  
school vested  
in board;  
powers and  
duties.

Provided, that if the board has adopted an annual appropriation resolution, as provided by section 4752-1, General Code, it may, by general resolution, authorize the director or other officer having the powers and duties of a director to appoint janitors, superintendents of buildings and such other employes as may be provided for in such annual appropriation resolution.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360; 107 v. 46 (47); 109 v. 377.

For other sections more or less germane to the provisions of this section, see sections 4750, 4752, 7685 and 7701, General Code.

The statutes vest boards of education with the power to appoint teachers for their schools, and in the exercise of this power they cannot be interfered with by the courts unless there is a gross abuse of the discretionary power given. *Youmans vs. Board of Education*, 13 O. C. C., 207; *State ex rel. vs. Township Board of Education*, 10 O. C. C. 574.

A board of education in the employment of a teacher has no power to authorize him to appoint an assistant. *State ex rel. vs. Williams*, 29 O. S. 161, 164.

Held, that the promises by a board of education of an increase in salary to a superintendent of schools during the term for which said superintendent was employed, without a change of duties or a new contract, was invalid. *Ward vs. Board of Education*, 21 O. C. C., 699.

However, a superintendent of public schools appointed by a board of education is not a public officer within the provisions of the constitution forbidding a change in the salary of public officers during their term of office. *Ward vs. Board of Education*, supra.

Held, that under the provisions of this section a board of education may fix a monthly or yearly salary for a janitor, or it may pay him a lump sum annually, out of which he is to pay his assistants. *State vs. Witt*, 3 App. 414; 20 O. C. C. (N S.) 529.

A board of education has the entire control and management of the schools and the school buildings and grounds in its district, and such board of education is within its statutory authority in



exercising its discretion as to the opening of such schools for meetings and entertainments held outside of school hours. *Op. Atty. Gen.* 1920, p. 274.

In a centralized school district maintaining a high school, the centralized school building may be erected to house both elementary and high schools, and may contain an auditorium and other rooms for such special school activities as are allowed by law at the discretion of the board of education. If the board decides to employ an architect it may do so before erecting such building, on condition that the architect shall receive no pay for services rendered should the vote for a bond issue fail, provided, of course, that such services are for an amount reasonable and customary in such cases and having in mind the limitations imposed by section 5660, *G. C. Op. Atty. Gen.* 1920, p. 884.

A board of education may not avoid the effect of section 7690 General Code by declaring a special vacation. Teachers are entitled to pay for time lost owing to epidemic, but such time is not presumed to be on holidays when schools are ordinarily closed. *Op. Atty. Gen.* (1919), p. 43.

Where a teacher is allowed to teach without the certificate demanded by statute, with and under full knowledge of the board of education, as well as the clerk of the board, the members of the board of education participating in such illegal act, the clerk of such board and the person receiving misappropriated funds under such illegal employment, are liable for any compensation paid from school funds to such person without certificate. *Op. Atty. Gen.* (1919), p. 187.

School janitors cannot collect salary for days on which no service was rendered, where schools have been closed by the Board of Health on account of epidemic.

Boards of education can issue bonds under 5656 General Code to fund obligations which are existing, valid and binding at the time, though the tax limitation may have been reached. *Op. Atty. Gen.* (1919), p. 441.

Under section 12946-1 General Code boards of education are not required to pay school janitors semi-monthly, but have the privilege of doing so under section 7690 General Code. *Op. Atty. Gen.* (1919), p. 468.

Teachers who were paid once for a school day are not entitled to a second pay from the board of education, which has purchased their time and can assign them as it seems fit under section 7690. Salaries of teachers ill with contagious disease cannot be withheld by a board of education and the board must provide substitutes. *Op. Atty. Gen.* (1919), p. 576.

Under 7690 General Code a board of education may use its contingent fund in the payment of a superintendent, after the tuition fund has proved inadequate. *Op. Atty. Gen.* (1919), p. 1007.

Where a board of education employs a teacher for a fixed term at a definite salary, and such teacher is compelled to be out of school with a contagious disease, and subsequently resumes teaching work for the board, the teacher is entitled to be paid for the time necessarily lost on account of such sickness.

Under section 7690 General Code the board of education has full control of the management of the schools of the district and can grant reasonable leaves of absence to teachers who are ill with a disease that is not contagious, if it sees fit to do so, but such leaves of absence must be reasonable in length of time. *Op. Atty. Gen.* (1919), p. 1134.

Where a board of education by resolution provides that in addition to the salary schedule adopted there shall be paid the sum of \$5.00 to the principal of each building for each and every thousand aggregate days of attendance of the pupils of such building, such additional amount earned by the principal under the resolution of the board of education is a portion of the aggregate salary set by the board of education for the principal, and may be legally paid by the board of education. *Op. Atty. Gen. No. 2352, Aug. 20, 1921.*

A rural board of education is without authority to elect a superintendent of schools under the general language of section 7690 G. C., since the General Assembly has provided for county supervision of schools by a county superintendent and such assistant county superintendents as may be elected by the county board of education. Op. Atty. Gen. No. 2324, Aug. 12, 1921.

A board of education in fixing the salary of its superintendent of schools may not fix such salary at a specified amount and provide that in addition thereto the superintendent shall receive a certain percentage of the foreign tuition collected, for the reason that such payment would not be a "fixed" salary as intended by section 7690 of the General Code, and such superintendent is not a bonded employe of the district.

The duty of receiving school funds is imposed upon the treasurer of the school district and under the provisions of section 7682 G. C. (109 O. L., 373) all money received for tuition from foreign district shall in all cases, upon its receipt, be placed in the tuition fund. Op. Atty. Gen. No. 3140, May 25, 1922.

See Opinions of Attorney General as follows:

- (1916), p. 1471, cited under Sec. 7735.
- (1918), p. 659, cited under Sec. 7691.
- No. 2492 (1921), cited under Sec. 7676.
- (1917), p. 729, cited under Sec. 7871.
- No. 2693, (1921), cited under Sec. 7764-1.
- (1919), p. 187, cited under Sec. 7830.
- (1919), p. 187, cited under Sec. 7786.
- (1915), p. 2089, cited under Sec. 7718.
- (1917), p. 1187, cited under Sec. 7703.
- No. 1813 (1921), cited under Sec. 7694.
- (1918), p. 85, cited under Sec. 7877.

SECTION 7690-I. Each board of education shall fix the salaries of all teachers which may be increased but not diminished during the term for which the appointment is made. Teachers must be paid for all time lost when the schools in which they are employed are closed owing to an epidemic or other public calamity.

Salaries of teachers; how fixed and paid.

HISTORY.—109 v. 377. For a section analogous to the section bearing this number in P. & A. Code, see G. C. § 486-8, which was 106 v. 400 (404); 103 v. 698 (701), § 8, P. & A. Code, p. 7690-1, which was 101 v. 154, was repealed in 103 v. 698 (713), § 32.

See opinions of Attorney General as follows:

- (1919), p. 576, cited under Sec. 7690.
- (1919), p. 1134, cited under Sec. 7690.

SECTION 7691. No person shall be appointed as a teacher for a term longer than four school years, nor for less than one year, except to fill an unexpired term, the term to begin within four months of the date of the appointment. In making appointments teachers in the actual employ of the board shall be considered before new teachers are chosen in their stead.

Terms.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360.

Where a board of education employs a teacher for a fixed term at a definite salary and there is nothing in the contract or in the rules of the board on the question of absence on account of sickness, and such teacher is compelled to be out of school with a contagious disease, and subsequently resumes teaching work for the board, the teacher is entitled to be paid for the time so necessarily lost on account of such sickness. Op. Atty. Gen. (1918), p. 659.

The appointment of a supervisor and teacher of hygiene by a board of education for a term of four years, in the place of the

school physician provided by law (7692 General Code) is illegal. Boards of education cannot change the title of a statutory position while the duties remain the same, in order to increase the time of tenure.

The duties of the school physician in a school district are clearly set forth in section 7692 General Code et seq. and a person performing such duties authorized by the statutes can be appointed for a term of but one year and may be discharged at any time by the employing board.

The board of education of the city school district of Dayton is compelled, under the Civil Service Act of the state, to make its appointments of employees of the board from eligible lists prepared by the Civil Service Commission of the city of Dayton, including all positions which are not specifically exempted by the Civil Service Act of Ohio. Op. Atty. Gen. 1920, p. 888.

A superintendent of an exempted village school district may be elected for a term of not less than one year nor more than four years, pursuant to section 7691 G. C. Op. Atty. Gen. No. 2234, July 2, 1921.

See Opinions of Attorney General as follows:

(1917), p. 2441, cited under Sec. 7705.

(1917), p. 729, cited under Sec. 7871.

School physi-  
cian, appoint-  
ment, qualifi-  
cations.

SECTION 7692. Each and every board of education in this state may appoint at least one school physician; provided two or more school districts may unite and employ one such physician, whose duties shall be such as are prescribed in this act. Said school physician shall hold a license to practice medicine in Ohio. School physicians may be discharged at any time by the appointing power whether the same be a board of education or of health or health officer, as herein provided. School physicians shall serve one year and until their successors are appointed, and shall receive such compensation as the appointing board may determine. Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board. Such board may delegate the duties and powers herein provided for to the board of health or officer performing the functions of a board of health within the school district if such board or officer is willing to assume the same. Boards of education shall co-operate with boards of health in the preventing of epidemics.

Nurses.

HISTORY.—R. S. § 4018a; 100 v. 12; 103 v. 864 (897).

The board of education of a school district may, under authority of section 7692 G. C., as amended 103 O. L. 897, appoint a school physician to perform the duties required by the provisions of section 7692-1, G. C., 103 O. L. 897, and in its discretion said board may employ a trained nurse to aid in the performance of said duties, or said board may delegate said duties to the board of health or officer performing the functions of a board of health in said district, providing said board or officer is willing to assume the same, together with the power to appoint said school physician and employ said trained nurse if said board or officer determines that the same is necessary for the proper discharge of the aforesaid duties. Op. Atty. Gen. 1915, p. 1918.

There is no legal authority under which a board of education may pay a doctor bill for services rendered to a pupil accidentally injured in a school. Op. Atty. Gen. 1920, p. 1260.

The positions of a member of the city board of education and deputy health commissioner are not incompatible. Op. Atty. Gen. (1920), p. 995.



See Opinions of Attorney General as follows:

(1920), p. 995, cited under Sec. 1261-26.

(1920), p. 888, cited under Sec. 7691.

SECTION 7692-1. School physicians may make examinations and diagnosis of all children referred to them at the beginning of every school year and at other times if deemed desirable. They may make such further examination of teachers, janitors and school buildings as in their opinion the protection of health of the pupils and teachers may require. Whenever a school child, teacher or janitor is found to be ill or suffering from positive open pulmonary tuberculosis or other contagious disease, the school physician shall promptly send such child, teacher, or janitor home, with a note, in the case of the child, to its parents or guardian, briefly setting forth the discovered facts, and advising that the family physician be consulted. School physicians shall keep accurate card index records of all examinations, and said records, that they may be uniform throughout the state shall be according to the form prescribed by the state school commissioner, and the reports shall be made according to the method of said form; provided, however, that if the parent or guardian of any school child or any teacher or janitor after notice from the board of education shall within two weeks thereafter furnish the written certificate of any reputable physician that the child, or teacher or janitor has been examined, in such cases the services of the medical inspector herein provided for shall be dispensed with, and such certificate shall be furnished by such parent or guardian from time to time, as required by the board of education. Such individual records shall not be open to the public and shall be solely for the use of the boards of education and health or other health officer. If any teacher or janitor is found to have positive open pulmonary tuberculosis or other communicable disease, his or her employment shall be discontinued upon expiration of the contract therefor, or, at the option of the board, suspended upon such terms as to salary as the board may deem just until the school physician shall have certified to a recovery from such disease.

Examination  
and diagnosis  
of children,  
teachers and  
janitors.

Uniform card  
index records  
shall be kept.

HISTORY.—103 v. 864 (897).

House Bill 211, known as Hughes Health Bill, effective August 10, 1919, did not repeal by implication sections 7692 and 7692-1 General Code, which empower boards of education to provide for medical inspection of schools.

Under section 11 of the Hughes Bill, district boards of health are required to provide for the medical inspection of schools, but such inspection is not exclusive, boards of education also having the right to make inspection to the extent provided in sections 7692 and 7692-1 General Code. Op. Atty. Gen. (1919), p. 106.

See Opinions of Attorney General as follows:

(1915), p. 1918, cited under Sec. 7692.

(1920), p. 888, cited under Sec. 7691.

(1920), p. 995, cited under Sec. 1261-26.

Publication of  
rules for en-  
forcement of  
act.

SECTION 7692-2. The state school commissioner and the state board of health, shall jointly pass rules for the detailed enforcement of the purposes of this act [G. C. § § 1349, et seq., 1639, et seq., 1815-8, et seq., 2084, et seq., 3070, et seq., 4083, et seq., 7676, et seq., 10082, et seq., 12957, et seq.], which rules shall bear the seals of said board and commissioner, the said rules to be printed and promulgated by the state printer; promulgation to consist in supplying a reasonable number of copies to each school superintendent, from whom all that are interested may receive copies.

HISTORY.—103 v. 864 (898).

See Opinions of Attorney General as follows:  
(1915), p. 1918, cited under Sec. 7692.  
(1920), p. 888, cited under Sec. 7691.

Who not  
eligible as  
physician.

SECTION 7692-3. No member of the board of education in any district in this state shall be eligible to the appointment of school physician during the period for which he or she is elected.

HISTORY.—103 v. 864 (898).

Affidavit of  
compliance.

SECTION 7692-4. Each board of education by the affidavit of an officer thereof or otherwise shall prove to the satisfaction of the state school commissioner that it has complied with the requirements of sections seven thousand six hundred and ninety-two, seven thousand six hundred and ninety-two-one, and seven thousand six hundred and ninety-two-two, of the General Code.

HISTORY.—103 v. 864 (898).

See Opinions of Attorney General as follows:  
(1915), p. 1918, cited under Sec. 7692.  
(1920), p. 888, cited under Sec. 7691.

Board may  
provide addi-  
tional com-  
pensation.

SECTION 7693. The board of education of any school district, may provide and pay compensation to the employees of the board of health in addition to that provided by the city, township or other municipality.

HISTORY.—R. S. § 4018a; 100 v. 12; 103 v. 864 (898).

See Opinions of Attorney General (1915), p. 1918, cited under Sec. 7692.

Director of  
schools.

SECTION 7694. A board of education in a city school district, may elect a director of schools, who shall serve as such for the term of two years, unless earlier removed. A vacancy in this office shall be filled for the unexpired term thereof.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360.

Under section 486-8 General Code the Municipal Civil Service Commission in each city in the state is the Civil Service Commission of the city school district in which such city is located, and such Municipal Civil Service Commission has authority to conduct examinations for all positions and employments under the board of education of such city school district unless the positions clearly come within the exemption mentioned in 486-8 General Code.

In city school districts all persons in the employ of the board of education of such city school district are in the classified civil

service unless they are directors, superintendents, principals, instructors or teachers, as provided in paragraph 7 of section 486-8 General Code.

The director of the vocation bureau in a city school district is not the head of a principal department in such city school district and hence the person in charge of the vocation bureau is in the classified civil service and subject to examination by the city civil service commission. The secretary of the placement office and the psychological laboratory assistants in the vocation bureau in a city school district are not "teachers connected with the public school system" (section 486-8 General Code) and hence are in the classified civil service of the city school district in which they are employed and subject to examination by such civil service commission.

In any city school district of the state it is unlawful for the fiscal officer of such city school district to issue any warrant on the disbursing officer of such city school district to pay any salary or compensation to any employee in the classified service, unless such payroll has been provided by the Municipal Civil Service Commission of the city in which such city school district is located, as provided in section 486-21.

The directors connected with the public school system, mentioned in paragraph 7 of section 486-8 General Code are the directors of schools in city school districts, as provided for in section 7695, 7696, 7697 and 7698 General Code, and the statutes do not recognize any other kind of director in connection with the public school system of the state. *Op. Atty. Gen. (1920), p. 80.*

Under section 7694 G. C. the board of education in a city school district, creating the position of director of schools, should elect such director by roll call, for a definite term, rather than place the statutory duties of such director of schools, by resolution, upon some other employe of the board.

The clerk and treasurer of a board of education is the ministerial officer of the board of education itself and a provision that such clerk-treasurer "shall at all times be under the direction and supervision of the public schools" would be null and void.

A person elected to or who performs the duties of director of schools, as set forth in section 7695 and 7696 of the General Code, cannot at the same time be the clerk and treasurer of the board of education because of the inhibition appearing in section 7695 G. C., that the director shall not have the care and custody of the moneys of the district. *Op. Atty. Gen. No. 1813, Jan. 26, 1921.*

See Opinions of Attorney General No. 2918, (1922), cited under Sec. 4747.

**SECTION 7695.** As director of school, he shall execute for the board of education, in the name of the school district, its contracts and obligations, except that bonds issued must be signed by the president of the board, and attested by the clerk. He shall see that all contracts made by or with such board are fully and faithfully performed. Except teachers, assistant teachers, supervisors, principals, superintendents of instruction, clerk of the board of education, such director shall have the appointment subject to the approval and confirmation of the board of all employes and may discharge them; provided that if the board has adopted an annual appropriation resolution as provided by section 4752-1 of this act, the board may, by general resolution, provide that such appointment shall not be required to be approved or confirmed by the board if provision therefore [therefor] has been made in such annual appropriation resolution. He shall have the care and custody of all property of the school district, real and personal, except moneys,

Powers and  
duties of  
director.



oversee the construction of buildings, in the process of erection, and the repairs thereof, and advertise for bids and purchase all supplies and equipment authorized by the board.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360; 107 v. 46 (48).

See Opinions of Attorney General (1917), p. 1187, cited under Sec. 7703.

Further duties  
of director.

SECTION 7696. Such director shall report to the board monthly, and oftener if required, as to all matters under his supervision, and report to the board a statement of its accounts, exhibiting the revenues, receipts, disbursements, assets and liabilities, the sources from which the revenues and funds are derived, and in what manner they have been disbursed. He shall keep accurate account of taxes levied for school purposes, and of all moneys due to, received and disbursed by the board; also, of all assets and liabilities and all appropriations made by it, and receive and preserve all vouchers for payments and disbursements made to or by the board. He must issue all warrants for the payment of money from the school fund, but no warrant shall be issued for the payment of any claim until it has been approved by the board; provided that if the board has adopted an annual appropriation resolution as provided by section 4752-1 of this act, then the board may, by general resolution, provide that such warrant need not be approved by the board but shall be approved by the auditor of the board, if the expenditure for which such warrant is issued is provided for in such annual appropriation resolution. The payroll for teachers, assistant teachers and supervisors must be countersigned by the superintendent of instruction. Such director shall attend all meetings of the board, and perform all of its executive functions not hereinbefore excepted in defining the duties of the director of schools. He must devote such portion of his time to the duties of his office as is required by the board of education at or before his election, and give a bond for the faithful discharge of his duties as director of schools, in such sum as the board determines, his sureties to be approved by it, which bond shall be deposited with the president of the board within ten days after his appointment.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360; 107 v. 46 (48).

Where an appropriation resolution has been passed pursuant to section 4752-1 G. C., together with a resolution authorizing the auditor of the board to approve warrants, when the expenditure has been from a fund provided for in said appropriation resolution, proper claims against the board may be paid from an account such as you call "petty cash fund", but the money of the school district is properly in the custody of the treasurer and cannot be placed in the care and possession of the chief accountant, auditor or other officer or appointee of the board, and such disposition of the funds of the board is unauthorized and illegal. Op. Atty. Gen. No. 2918, Mar. 9, 1922.

SECTION 7697. Such director shall receive such compensation as is fixed by the board before his election, which shall not be changed during his term of office.

Salary of director.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360; 108 v. Pt. II 1229.

SECTION 7698. By a two-thirds vote for cause, the board of education at any time may suspend or remove the director of schools, but such suspension or removal shall not be made unless the charges are preferred in writing, and an opportunity afforded to bring all offered pertinent testimony in as a defense, which testimony shall be received and considered by the board and made a part of its records.

May suspend or remove director.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360.

SECTION 7699. Upon the appointment of any person to any position under the control of the board of education, the clerk promptly must notify such person verbally or in writing of his appointment, the conditions thereof, and request and secure from him within a reasonable time to be determined by the board, his acceptance or rejection of such appointment. An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause.

Appointees; clerk's duty.

HISTORY.—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360.

Where a person has been employed as a teacher in a public school under one contract and under another contract at a subsequent date has been employed as a school driver or conveyor of pupils, the release by the board of education from the obligations of the second contract, by motion spread upon its minutes, closes the contract relation as a school driver.

Where an employee of a board of education submits his resignation or requires a release from the contract, such resignation or release from such employment cannot become effective except by the consent of the board of education, and if such employee thereafter fails to perform any of the duties mentioned in such contract, from which he has not been released by the board of education, such contracting employee is liable to the employing board of education for any damages sustained.

Where a board of education desires to dismiss a teacher, it is necessary that charges be reduced to writing and filed with the board of education and an opportunity be given the teacher for defense before the board, or a committee thereof, and a majority of the full membership of the board of education upon roll call in favor of such dismissal is required in order to be effective. As to what constitutes inefficiency, neglect of duty, immorality or improper conduct, is for the board of education in its discretion to decide. Teachers dismissed for any frivolous or insufficient reason may bring suit against such districts as provided by section 7708 General Code. Op. Atty. Gen. (1920), p. 279.

To dissolve a contract between a school teacher and a school board the payment of a sum of money by the board is neither an express or implied power of the school law.

Such contracts are dissolved by resignation or expire or are terminated for cause.

Sinecures are not favored by the law and money expended for such purposes is misuse of school funds. Op. Atty. Gen. (1920), p. 764.

See Opinions of Attorney General as follows:

(1915), p. 2089, cited under Sec. 7718.

(1918), p. 85, cited under Sec. 7877.

Resignations  
must be con-  
sidered by  
the board.

Suspension of  
certificate.

Report of un-  
authorized  
resignations.

**SECTION 7700.** All resignations or requests for release from contract by teachers, superintendents, or employes, must be promptly considered by the board, but no resignation nor release shall become effective without the consent of the board. The certificate of any superintendent, principal or teacher who resigns or gives up his position without the consent of the board after the first day of August prior to the school year for which he has been employed shall be suspended for the period of time covered by the unfulfilled contract; and no board of examiners shall issue a certificate to such person during the period covered by such contract. Each board of education shall report any such unauthorized resignation to the superintendent of public instruction and to the board of examiners who issued the certificate under authority of which such employment was obtained, and such certificating authority shall thereupon suspend such certificate. The superintendent of public instruction shall send each month to the county, city, and exempted village superintendents of the state a list of superintendents, principals, or teachers, whose certificates granted by the state board or local boards of examiners, have been suspended, or where cause exists for the suspension of such certificates.

**HISTORY.**—R. S. § 4017; 70 v. 195, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360; 109 v. 153.

A resignation from office, to become effective at some future time, can not be withdrawn after acceptance without the consent of the accepting party: State, ex. rel., v. Board of Education, 23 O. C. C. (N. S.) 98 [affirmed, without opinion, State, ex rel., v. Board of Education, 87 O. S. 529].

It is not necessary that a resignation from a public office be couched in any particular words. It is only necessary that the incumbent evince a purpose to relinquish the office, that this purpose be communicated to the proper authority, and that this resignation be accepted, either in terms or something tantamount thereto: State, ex rel., v. Board of Education, 23 O. C. C. (N. S.) 98 [affirmed, without opinion, State, ex rel., v. Board of Education, 87 O. S. 529].

The fact that a resignation is addressed to the president of a public board does not prevent it from being in legal effect a resignation to such board, if the officer who signs such resignation intends that the president shall transmit it to such board: State, ex rel., v. Board of Education, 23 O. C. C. (N. S.) 98 [affirmed, without opinion, State, ex rel., v. Board of Education, 87 O. S. 529].

A resignation of a director of schools may be accepted informally, as by excluding from its resolution which approves a report of its committee, that part of the report of such committee which requests such director of schools to tender his resignation: State, ex rel., v. Board of Education, 23 O. C. C. (N. S.) 98 [affirmed without opinion, State, ex rel., v. Board of Education, 87 O. S. 529].

The following communication, "Referring to the present contention as to the office of director, it is my intention to retire from the work at an early date after confidence and quiet are restored. The limit of my services will be June 15, 1912," which is addressed to the president of the board of education, and which the director of schools, who signs it, authorizes the president of the board to whom he delivers it, to use as he sees fit, is a resignation: State,



ex rel., v. Board of Education, 23 O. C. C. (N. S.) 98 [affirmed, without opinion, State, ex rel., v. Board of Education, 87 O. S. 529].

See Opinions of Attorney General No. 2234, (1921), cited under Sec. 7691.

SECTION 7701. Each board may dismiss any appointee or teacher for inefficiency, neglect of duty, immorality, or improper conduct. No teacher shall be dismissed by any board unless the charges are first reduced to writing and an opportunity be given for defense before the board, or a committee thereof, and a majority of the full membership of the board vote upon roll call in favor of such dismissal. Dismissals.

HISTORY.—R: S. § 4017; 70 v. 196, § 53; 87 v. 372; 89 v. 96; 89 v. 202; 91 v. 113; 91 v. 422; 93 v. 48; 97 v. 360.

Under section 7708, in an action by a teacher who has been dismissed upon a charge of immorality and improper conduct, it is for the jury to determine from all the facts and circumstances in the case whether or not the conduct of the teacher was such as to constitute a good and sufficient reason for his dismissal by the board of education. 92 O. S. 58.

The provision of section 7702 General Code, that the term of a superintendent of schools must end on August 31, is directory and not mandatory, time not being the essence of the contract.

The provision of section 7701 that no "teacher" shall be dismissed by a board of education unless charges are first reduced to writing and an opportunity given for defense before the board or a committee thereof, covers superintendents of public schools, and the dismissal of a superintendent without observance of these provisions may be enjoined.

A court will not permit a board of education to abrogate and hold for naught a contract entered into by its predecessors, unless it first establishes its legal right so to do, nor will it remit to an action at law a party suffering from the annulling of such a contract. Layton v. Clements, 7 App. 499.

If the action of the board of education in dismissing a teacher for inefficiency, neglect of duty, immorality or improper conduct under this section were held to be conclusive and not subject to review by the courts, such construction would nullify the provisions of G. C. § 7708, which give a right of action to a teacher who is dismissed for a frivolous or insufficient reason: Shuck v. Board of Education, 92 O. S. 55.

Whether a charge in writing under this section is sufficient which merely notifies the accused teacher that "the charges against you are immorality", especially where the only evidence of immorality is the fact that such teacher struck the superintendent with a poker, was considered but not decided in: Shuck v. Board of Education, 92 O. S. 55.

Under G. C. § 7708, in an action by a teacher who has been dismissed upon the charge of immorality and improper conduct, it is for the jury to determine from all the facts and circumstances in the case whether or not the conduct of the teacher was such as to constitute a good and sufficient reason for his dismissal by the board of education: Shuck v. Board of Education, 92 O. S. 55.

The amendment of this section (97 v. 334), providing that a teacher shall not be dismissed by a board of education unless the charges are first reduced to writing and an opportunity given him for defense, does not enlarge or extend the provisions of G. C. § 7708, which confer upon a teacher who is dismissed for a frivolous or insufficient reason the right to bring suit against the school district, nor does the amendment give to the teacher an additional ground upon which to base his action: Shuck v. Board of Education, 92 O. S. 55.

The fact that the statutory right of action (G. C. § 7708) for dismissing a teacher for a frivolous or insufficient reason existed before this section was so amended as to specify the procedure

in dismissing a teacher for inefficiency, neglect of duty, immorality or improper conduct, shows that when the statute was enacted originally the action given thereby was not intended as an action for irregularity in procedure: *Shuck v. Board of Education*, 92 O. S. 55.

The authority conferred upon a board of education to dismiss any teacher for inefficiency, neglect of duty, immoral or improper conduct can be lawfully exercised only after the charges have been reduced to writing and the accused teacher has been given reasonable opportunity to appear before the board and make defense thereto: *School District v. Breese*, 15 O. C. C. (N. S.) 497.

A teacher, employed for a school year or for any specified term, if wrongfully discharged before expiration of the term of employment, may recover salary in full for the remainder of such term, upon a showing of failure to obtain other employment after reasonable effort so to do: *School District v. Breese*, 15 O. C. C. (N. S.) 497.

The power conferred upon school boards by this section to dismiss any appointee or teacher for cause, after hearing, is administrative and not judicial in its nature, and so not unconstitutional: *Frederick v. Board of Education*, 18 O. C. C. (N. S.) 435.

Injunction will not lie to restrain a board of education from trying a superintendent of schools on charges involving improper conduct under this section, although two of the five members of the board have signed the written charges in which they have stated that they believe that such superintendent is guilty of such improper conduct, and one of the remaining members of the board of education was a necessary and hostile witness. If a court of equity were to enjoin such trial it would invade the functions of the executive department, and after such trial the remedy for an improper dismissal would be at law and not in equity: *Frederick v. Board of Education*, 18 O. C. C. (N. S.) 435.

A court of equity is without jurisdiction to interfere by injunction to prevent the trial and dismissal of a school teacher by a school board because to do so in advance of its action would be to invade the functions of the executive or administrative department, and after such action the remedy for erroneous proceedings lies with a court of law: *Frederick v. Board of Education*, 18 O. C. C. (N. S.) 435.

A court of equity will not revise the rules of a board of education, unless they are unreasonable: *Owens v. Board of Education*, 25 O. D. (N. P.) 161 [for later opinion, see *In re Frederick*, 60 Bull. 81; which was reversed, *Frederick v. Owens*, 25 O. C. D. 538, 60 Bull. 321; writ of certiorari denied, *Owens v. Board of Education*, 60 Bull. 479].

A taxpayer in a school district may sue to enjoin a board of education from refusing to employ teachers who are affiliated with a labor union federation: *Owens v. Board of Education*, 25 O. D. (N. P.) 161 [for later opinion, see *In re Frederick*, 60 Bull. 81; which was reversed, *Frederick v. Owens*, 25 O. C. D. 538; 60 Bull. 321; writ of certiorari denied, *Owens v. Board of Education*, 60 Bull. 479].

See Opinions of Attorney General (1915), p. 2089, cited under Sec. 7718.

Superintendent.

SECTION 7702. The board of education in each city school district at a regular meeting, between May 1st and August 31st, shall appoint a suitable person to act as superintendent of the public schools of the district, for a term not longer than five school years, beginning within four months of such appointment and ending on the 31st day of August.

Provided, that in the event of a vacancy occurring in the office of the superintendent prior to May 1st, the board

of education may appoint a superintendent for the unexpired portion of that school year.

Provided, also, that if the vacancy occur through resignation or removal for cause, the superintendent thus resigning or removed shall be ineligible for reappointment to such office until after the reorganization of the board of education following the next general election of members of such board.

Vacancy.

HISTORY.—R. S. § 4017a; 94 v. 377; 97 v. 362; 102 v. 193.

When it is necessary to search for teachers to teach in the schools of the district, the superintendent of schools in a city school district may be paid expenses actually incurred. When the superintendent for any reason cannot so act, after the board by resolution has declared such necessity to exist and has so authorized a member to perform such duty any reasonable expense actually incurred by members of the board in search of teachers may be paid for it. The service fund, once created, may be used only to pay expenses of the members of the board actually incurred in the performance of their duties. Op. Atty. Gen. (1920), p. 706.

Mandamus is the proper remedy to restore a party to the possession of an office from which he has been removed illegally: State, ex rel., v. Board of Education, 23 O. C. C. (N. S.) 98 [affirmed, without opinion, State, ex rel., v. Board of Education, 87 O. S. 529, and citing State, ex rel., v. Baldwin, 77 O. S. 533].

It was held by the court of common pleas that a board of education had no right to refuse to re-employ teachers who affiliated with a labor union federation: Owens v. Board of Education, 25 O. D. (N. P.) 161, [for later opinion, see In re Frederick, 60 Bull. 81; which was reversed, Frederick v. Owens, 25 O. C. D. 538, 60 Bull. 321; writ of certiorari denied, Owens v. Board of Education, 60 Bull. 479].

See Opinions of Attorney General as follows:

(1915), p. 2089, cited under Sec. 7718.

(1917), p. 1187, cited under Sec. 7703.

No. 2234, (1921), cited under Sec. 7691.

(1918), p. 85, cited under Sec. 7877.

No. 3140 (1922), cited under Sec. 7690.

SECTION 7703. Upon his acceptance of the appointment, such superintendent, subject to the approval and confirmation of the board, may appoint all the teachers, and for cause suspend any person thus appointed until the board or a committee thereof considers such suspension, but no one shall be dismissed by the board except as provided in section seventy-seven hundred and one. But any city or exempted village board of education, upon a three-fourths vote of its full membership, may re-employ any teacher whom the superintendent refuses to appoint. Such superintendent shall visit the schools under his charge, direct and assist teachers in the performance of their duties, classify and control the promotion of pupils, and perform such other duties as the board determines. He must report to the board annually, and oftener if required, as to all matters under his supervision, and may be required by it to attend any and all of its meetings. He may take part in its deliberations but shall not vote.

Powers and duties of superintendent.

HISTORY.—R. S. § 4017a; 94 v. 377; 97 v. 362; 109 v. 553.



A court has no right to order the superintendent of a city school district and the board of education to re-employ certain teachers, or to refuse to re-employ teachers for certain reasons which seem satisfactory to the superintendent and the board of education, although not satisfactory to the court. Such order is said to be absolutely void, and a superintendent can not be punished for contempt for failure to comply therewith: *Frederick v. Owens*, 25 O. C. D. 538 [reversing *In re Frederick*, 60 Bull. 81; for original hearing, see *Owens v. Board of Education*, 25 O. D. (N. P.) 161; writ of certiorari denied. *Owens v. Board of Education*, 60 Bull. 479].

"Principals" in the public schools are teachers, and under section 7703 General Code, in city districts, may be appointed by the superintendent. *Op. Atty. Gen.* (1917), 1187.

Where a board of education has given the power of appointment of teachers to its superintendent of schools, the authority to assign such teachers follows such power of appointment vested in the superintendent of schools. *Op. Atty. Gen.* (1919), p. 682.

See Opinions of Attorney General as follows:

(1915), p. 2089, cited under Sec. 7718.

No. 2234, (1921), cited under Sec. 7691.

"Service fund"  
set aside.

SECTION 7704. On the third Monday of every January or on the Monday preceding the close of school each year, the clerk of the board of education of a city school district shall certify to the board of education of which he is clerk, the number of pupils enrolled in the public schools of that district, whereupon the board of such city school district may by resolution set aside from the contingent fund a sum not to exceed five cents for each child so enrolled, such sum of money to be known as the "service fund" to be used only in paying the expenses of such members actually incurred in the performance of their duties, or of their official representatives when sent out of the city school district for the purpose of promoting the welfare of the schools under their charge; such payments to be made only on statement of the several members, or their official representatives, furnished at the last meeting held in each month.

HISTORY.—99 v. 322, § 1; 109 v. 589.

The board of education of a city school district, prior to the amendment of section 7704 G. C. (109 O. L. 589), could not legally pay the expenses of the chief architect made in attending the national educational association meetings from the service fund or other fund of the board. Since amendment said expenses may be paid from said service fund. This same statement applies also to that part of your second question relating to the expenses of the superintendent of schools in attending national educational association meetings.

Expenditure of public funds of the school district of the city of Cleveland in entertaining the national educational association is not authorized by the school statutes and therefore illegal. *Op. Atty. Gen.* No. 2918, Mar. 9, 1922.

Employment  
of teachers.

SECTION 7705. The board of education of each village, and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of appointment. The local board shall employ no teacher for any school unless such teacher is nominated therefor by the county or assistant county superintendent except by a majority vote of its full membership. In all high schools

and consolidated schools one of the teachers shall be designated by the board as principal and shall be the administrative head of such school.

HISTORY.—R. S. § 4017a; 97 v. 362; 94 v. 377; 104 v. 133 (144); 109 v. 244.

In the light of section 7705 General Code the principal of a high school, or a grade school, if not employed as a superintendent, is still a teacher within the meaning of section 7600 General Code and distribution of the funds mentioned in such section should be made on the basis that high school principals and grade school principals are teachers within the meaning of such section. Op. Atty. Gen. (1920), p. 974.

A board of education of a village school may not extend a teacher's contract one or more years, but may enter into a new contract not to exceed three years, by agreement between the board of education and the teacher, and the new contract will stand in the place of and be a substitute for the old one.

The present board of education cannot enter into a contract with a teacher, extending the present term, because the term must begin within four months after the date of the appointment. Op. Atty. Gen. (1917), p. 2440.

See Opinions of Attorney General as follows:

(1918), p. 659, cited under Sec. 7691.

(1915), p. 2089, cited under Sec. 7718.

No. 2234, (1921), cited under Sec. 7691.

(1920), p. 888, cited under Sec. 7691.

SECTION 1465-60. The following shall constitute employers subject to the provisions of this act [G. C. § § 1465, et seq.] :

Employers  
subject to  
law.

1. The state and each county, city, township, incorporated village and school district therein.

2. Every person, firm and private corporation, including any public service corporation, that has in service five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract or hire, express or implied, oral or written.

HISTORY.—108 v. 72 (77), § 13; 108 v. Pt. I 313 (316). Subdivision 2 of this section in effect July 1, 1920. For a section analogous to the section bearing this number in P. & A. Code, see G. C. § 1465-73, which was 103 v. 72 (82), § 26. P. & A. Code § 1465-60, which was 102 v. 524, § 21-1, was repealed in 108 v. 72 (92), § 60. To take effect January 1, 1914.

SECTION 1465-61. The terms "employee," "workman" and "operative" as used in this act [G. C. §§ 1465-45, 1465-47 to 1465-49, 1465-53 to 1465-55, 1465-60 to 1465-61, 1465-69, 1465-72, 1465-79 to 1465-80, 1465-82 to 1465-83, 1465-90, 1465-93 to 1465-95], shall be construed to mean:

Definition of  
terms.

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or fireman are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be

established and maintained by municipal authority under existing laws.

2. Every person in the service of any person, firm or private corporation, including any public service corporation, employing five or more workmen or operative regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, but not including any person whose employment is but casual and not in the usual course of trade, business, profession or occupation of his employer.

3. Every person in the service of any independent contractor or sub-contractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the industrial commission of Ohio for his employment or occupation, or to elect to pay compensation direct to his injured and to the dependents of his killed employes, as provided in section 1465-69, General Code, shall be considered as the employe of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employes, or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.

HISTORY.—103 v. 72 (77), § 14; 107 v. 159; 108 v. Pt. I 313 (316). Subdivision 2 of this section in effect July 1, 1920. For a section analogous to the section bearing this number in P. & A. Code, see G. C. § 1465-76, which was 104 v. 193 (194), § 29; 103 v. 72 (84), § 29. P. & A. Code § 1465-61, which was 102 v. 524, § 21-2, was repealed in 103 v. 72 (92), § 60. To take effect January 1, 1914.

Contribution  
by state,  
county, city,  
township, etc.

SECTION 1465-62. Every employer mentioned in subdivision one of section thirteen hereof [G. C. § 1465-60], shall contribute to the state insurance fund in proportion to the annual expenditure of money by such employer for the service of persons described in subdivision one of section fourteen hereof [G. C. § 1465-61], the amount of such payments and the method of making the same to be determined as hereinafter provided.

HISTORY.—103 v. 72 (77), § 15. For a section analogous to the section bearing this number in P. & A. Code, see G. C. § 1465-89, which was 103 v. 72 (88), § 42; 107 v. 528. P. & A. Code § 1465-62, which was 102 v. 524, § 23, was repealed in 103 v. 72 (92), § 60.

This section is valid and constitutional. The method by which the amount to be paid by the state or by its subdivisions is to be ascertained is different from the method by which the amount paid by other employers is to be ascertained; but such difference is authorized by Art. II, § 35, of the constitution of Ohio, which permits the classification of occupations and the distribution of the fund; and as it is uniform in its operation throughout the state, it is not in violation of Art. II, § 26, of the constitution of Ohio: Trustees v. Hopkins, 91 O. S. 74 [affirming Trustees v. Hopkins, 3 Ohio App. 433, 20 O. C. C. (N. S.) 548; which was an appeal from Cincinnati v. Hopkins, 16 O. N. P. (N. S.) 279].

Per centum  
to be con-  
tributed by  
state and sub-  
divisions.

SECTION 1465-63. The amount of money to be contributed by the state itself, and by each county, city, incorporated village or other taxing district of the state shall be, unless otherwise provided by law, a sum equal to one per



centum of the amount of money expended by the state and for each county, city, incorporated village or other taxing district respectively during the next preceding fiscal year for the service of persons described in subdivision one of section fourteen hereof, and the amount to be so contributed by any school district shall be equal to one-tenth of one per centum of the amount similarly expended by such district during such preceding fiscal year for the service of persons described as above.

**HISTORY.**—103 v. 72 (77), § 16; 108 v. Pt. I 555. For a section analogous to the section bearing this number in P. & A. Code. see G. C. § 1465-89, which was 103 v. 72 (88), § 42; 107 v. 528. P. & A. Code § 1465-63, which was 102 v. 524, § 24, was repealed in 103 v. 72 (92), § 60.

**Trustees v. Hopkins, 91 O. S. 74.** See under Sec. 1465-62.

This section is not invalid as in violation of Art. XII, § 5, of the constitution of Ohio, which provides that no tax shall be levied except in pursuance of law, and that every law imposing a tax shall state distinctly the object thereof to which only the funds raised by such tax shall be applied. Such constitutional provision does not forbid taxation for contingent and general funds; since it is impracticable to name specifically in the different budgets the amount to be raised for each specific item: *Trustees v. Hopkins, 91 O. S. 74* [affirming *Trustees v. Hopkins, 3 Ohio App. 433, 20 O. C. C. (N. S.) 548*; which was on appeal from *Cincinnati v. Hopkins, 16 O. N. P. (N. S.) 279*; distinguishing *State, ex rel., v. Edmondson, 89 O. S. 351*].

Section 16 of the workmen's compensation act (G. C. § 1465-63), providing that, "the amount of money to be contributed by the state itself, and each county, city, incorporated village, school district or other taxing district of the state shall be, unless otherwise provided by law, a sum equal to one per centum of the amount of money expended by the state and for each county, city, incorporated village, school district or other taxing district respectively during the next preceding fiscal year for the service of persons described in subdivision one of section fourteen hereof," is a valid exercise of the power conferred upon the legislature under Art. II, § 35, and is not in conflict with Art. XII, § 5, of the constitution of Ohio: *Cincinnati v. Hopkins, 16 O. N. P. (N. S.) 279* [for opinion on appeal, see *Trustees, v. Hopkins, 3 Ohio App. 433, 20 O. C. C. (N. S.) 548*; which was affirmed, *Trustees v. Hopkins, 91 O. S. 74*].

**SECTION 7707.** Teachers must exercise reasonable care in regard to school property, apparatus, and supplies intrusted to their keeping. They shall strive to guard the health and physical welfare of the pupils in their schools, give sufficient instruction in the studies pursued, and endeavor to maintain good discipline over all the pupils under their charge. But no teacher shall be required by any board to do the janitor work of any school room or building, except as mutually agreed by special contract, and for compensation in addition to that received by him for his services as teacher.

General duties  
of teachers.

**HISTORY.**—R. S. § 4018; 70 v. 195, § 53; 87 v. 46; 89 v. 96; 93 v. 48; 97 v. 363.

This section requires a special contract for the employment of a janitor, and excludes the idea of an implied contract: *Board of Education v. Parker, 1 Ohio App. 114, 21 O. C. C. (N. S.) 280, 25 O. C. D. 251* [disapproving *Reid v. Board of Education, 6 O. N. P. (N. S.) 526, 16 O. D. (N. P.) 414*].

Without any agreement with the board of education therefor, a teacher performed services as janitor in connection with his school duties. Having dismissed school on certain holidays during the school term he substituted and taught other days, upon requirement of the board, "to make up for said holidays." It was held that he can not recover as upon a quantum meruit for the janitor services, nor for the prorated amount of his stipulated monthly salary for the excess days taught: *Board of Education v. Parker*, 1 Ohio App. 114, 21 O. C. C. (N. S.) 280, 25 O. C. D. 251 [disapproving third proposition of syllabus, *Reid v. Board of Education*, 6 O. N. P. (N. S.) 526].

Teachers dismissed for insufficient cause.

SECTION 7708. If the board of education of any district dismisses a teacher for any frivolous or insufficient reason, the teacher may bring suit against such district. If, on trial of the cause a judgment be obtained against the district, the board thereof shall direct the clerk to issue an order upon the treasurer for the sum so found due to the person entitled thereto, to pay it out of any money in his hands belonging to the district, applicable to the payment of teachers. In such suits process may be served on the clerk of the district, and service upon him shall be sufficient.

HISTORY.—R. S. § 4019; 76 v. 58, § 1; 89 v. 97; 97 v. 363.

This section is in derogation of the common law and must be construed strictly. *Shuck v. Board of Education*, 92 O. S. 55.

If a substantial reason for discharging a teacher exists, this section does not give a right of action to such teacher for his discharge, although the board of education may have failed to reduce the charges to writing, as required by G. C. § 7701, and may have denied to the teacher an opportunity for defense: *Shuck v. Board of Education*, 92 O. S. 55.

If the action of the board of education in dismissing a teacher for inefficiency, neglect of duty, immorality or improper conduct under G. C. § 7701, were held to be conclusive and not subject to review by the courts, such construction would nullify the provisions of this section, which give a right of action to a teacher who is dismissed for a frivolous or insufficient reason: *Shuck v. Board of Education*, 92 O. S. 55.

Under this section, in an action by a teacher who has been dismissed upon the charge of immorality and improper conduct, it is for the jury to determine from all the facts and circumstances in the case whether or not the conduct of the teacher was such as to constitute a good and sufficient reason for his dismissal by the board of education: *Shuck v. Board of Education*, 92 O. S. 55.

The fact that the statutory right of action for dismissing a teacher for a frivolous or insufficient reason existed before G. C. § 7701 was so amended as to specify the procedure in dismissing a teacher for inefficiency, neglect of duty, immorality, or improper conduct, shows that when the statute was enacted originally the action given thereby was not intended as an action for irregularity in procedure: *Shuck v. Board of Education*, 92 O. S. 55.

The amendment of G. C. § 7701 (97 v. 334), providing that a teacher shall not be dismissed by a board of education unless the charges are first reduced to writing and an opportunity given him for defense, does not enlarge or extend the provisions of this section which confer upon a teacher, who is dismissed for a frivolous or insufficient reason, the right to bring suit against the school district nor does the amendment give to the teacher an additional ground upon which to base his action: *Shuck v. Board of Education*, 92 O. S. 55.

The fact that a teacher has wrongfully suspended a pupil, in doing which he is complying with the orders of the board of education, does not prevent such teacher from recovering the agreed

compensation for his services: State, ex rel., v. Blain, 36 O. S. 429.

Referred to as showing that process may be served upon the clerk of a board of education: State, ex rel., v. Coon, 4 O. C. C. (N. S.) 560, 16 O. C. D. 241.

See Section 7701.

SECTION 7709. Any publisher or publishers of school-books in the United States desiring to offer school-books for use by pupils in the common schools of Ohio as hereinafter provided, before such books may be lawfully adopted and purchased by any school board, must file in the office of the superintendent of public instruction, a copy of each book proposed to be so offered, together with the published list wholesale price thereof. No revised edition of any such book shall be used in common schools until a copy of such edition has been filed in the office of the superintendent together with the published list wholesale price thereof. The superintendent must carefully preserve in his office all such copies of books and the price thereof.

Filing and preservation of copies and price list of school books.

HISTORY.—R. S. § 4020-10; 92 v. 282, § 1; 104 v. 225 (230).

When a publisher of text-books, desiring to offer the same for use for pupils in the common schools of Ohio, files in the office of the Superintendent of Public Instruction, a copy of such book or books together with the published price list thereof, and the commission, consisting of the Governor, Secretary of State and Superintendent of Public Instruction, fixes the maximum price (not exceeding 75% of such list price) at which book or books may be sold to or purchased by boards of education; and if after notice of such price, such publisher notified the Superintendent in writing that he accepts such price, and agrees in writing to furnish such book or books during a period of five years at that price such proceedings constitute a contract between such publisher and the Commission for the benefit of boards of education of the state, whereby such publisher becomes bound to furnish such book or books to boards of education for the full period of five years from that date of such written notice and agreement, at a price not exceeding that so fixed by the Commission and accepted by such publisher.

Boards of education are limited in their selection of books to be used in the public schools of the state, to the books so filed with said Commission, but books so selected and adopted must be adopted for a period of five years subject to the right to change such adoption by the consent, at a regular meeting, of 5/6 of the members thereof.

It is the duty of boards of education before adopting any such books, to make an effort to secure from such publishers the desired books at less than the maximum so fixed by the Commission.

Within the period of five years from his acceptance of a maximum price fixed by the Commission for any book, a publisher thereof may not refile the same book, with the Superintendent and have a higher maximum price fixed therefor. Op. Atty. Gen. (1920), p. 272.

Publishers of text-books cannot charge more than the Ohio contract price on file with the State School Book Commission for books regularly adopted.

When books for use in public schools are regularly adopted by a board of education such adoption is for a period of five years, and the board of education is entitled during such period to the benefit of the price of such text-book as filed by the publisher with the School Book Commission.

There is but one method for the legal adoption of books for use in the public schools and that is the method provided in section 4752 General Code. The statutes do not recognize an adoption



of a school book for supplementary or reference purposes as against an adoption for school use. Op. Atty. Gen. (1919), p. 1443.

A board of education, in making change in text books for use in the public schools of its district, has no authority in law to pay the exchange price between the old and new books from its contingent fund, the ownership of the newly adopted books remaining with the pupils. Op. Atty. Gen. (1915), p. 1939.

The revision of a school book is the same as the offering of a new book under sections 7709 and 7710, and therefore, the expiration of the listing of such revised school book expires five years from the date such revised edition is filed. Op. Atty. Gen. (1914), p. 1055.

The General Assembly has not authorized the state textbook commission to examine the content or subject matter of a textbook filed by a publisher under section 7709 G. C., the duty of the textbook commission being to immediately fix the maximum price at which such books may be sold to or purchased by boards of education in the state. Op. Atty. Gen. No. 2713, Dec. 19, 1921.

See Opinions of Attorney General as follows:

(1917), p. 330, cited under Sec. 7710.

(1916), p. 796, cited under Sec. 7713.

(1915), p. 627, cited under Sec. 7739.

Maximum  
price; notice  
to publisher.

**SECTION 7710.** When and so often as any book and the price thereof is filed in the office of the superintendent of public instruction as provided in section 7709 a commission consisting of the governor, secretary of state and superintendent of public instruction, immediately shall fix the maximum price at which such books may be sold to or purchased by boards of education, as hereinafter provided, which price must not exceed seventy-five per cent. of the published list wholesale price thereof. The superintendent of public instruction immediately shall notify the publisher of such book so filed, of the maximum price fixed. If the publisher so notified, notifies the superintendent in writing that he accepts the price fixed, and agrees in writing to furnish such book during a period of five years at that price, such written acceptance and agreement shall entitle the publisher to offer the book so filed for sale to such boards of education.

**HISTORY.**—R. S. § 4020-11; 92 v. 282, § 2; 104 v. 225 (231).

A board of education may not adopt for use text books which were first filed in 1915 at a certain price but were not relisted in 1920 by the publisher at the end of the five year period mentioned in section 7710 G. C., since such period ends with the expiration of the five years, starting with the date of acceptance by the publisher of the price fixed by the text book commission. Op. Atty. Gen. No. 2137, June 6, 1921.

Under G. C. 7710 providing a school book commission and for filing text books with the superintendent of public instruction, it is necessary to file a given text book with the published list wholesale price each five years.

The five-year period mentioned in said section applies to such filing, and does not refer to the five-year period provided in section 7713, during which a board of education may not make a change of text books. Op. Atty. Gen. 1917, p. 330.

See Opinions of Attorney General as follows:

(1914), p. 1055, cited under Sec. 7709.

(1915), p. 1939, cited under Sec. 7709.

SECTION 7711. Such superintendent, during the first half of the month of June, in each year, must furnish to each board of education the names and addresses of all publishers who during the year ending on the first day of the month of June in each year, agreed in writing to furnish their publications upon the terms above provided. A board of education shall not adopt or cause to be used in the common schools any book whose publisher has not complied, as to such book, with the provisions of law relating thereto.

Names and  
addresses of  
publishers  
furnished  
to boards.

HISTORY.—R. S. § 4020-12; 92 v. 282, § 3; 104 v. 225 (281).

See Opinions of Attorney General as follows:

(1917), p. 330, cited under Sec. 7710.

(1916), p. 796, cited under Sec. 7713.

SECTION 7712. If a publisher who agreed in writing to furnish books as above provided, fails or refuses to furnish such books adopted as herein provided to any board of education or its authorized agent upon the terms herein provided, such board at once must notify such commission of such failure or refusal, and it at once shall cause an investigation of such charge to be made. If it is found to be true the commission at once shall notify such publisher and each board of education in the state that such book shall not thereafter be adopted and purchased by boards of education. Such publisher shall forfeit and pay to the state of Ohio five hundred dollars for each failure, to be recovered in the name of the state, in an action to be brought by the attorney-general, in the court of common pleas of Franklin county, or in any other proper court or in any other place where service can be made. The amount, when collected, must be paid into the state treasury to the credit of the common school fund of the state.

Violation of  
agreement by  
publisher.

HISTORY.—R. S. § 4020-13; 92 v. 283, § 4.

A teacher, superintendent, supervisor or principal employed by any board of education in the state, who is employed by a publisher of books listed with the superintendent of public instruction, according to the provisions of section 7712 G. C., as a demonstrator of a method reader of such publisher for sale for use in the public schools of this state, in a summer normal school within the state, is acting indirectly as a sales agent for such publisher within the terms of section 7718 G. C., 106 O. L., 447, and is subject to the provisions thereof. Op. Atty. Gen. (1916), p. 863.

See Opinions of Attorney General as follows:

(1916), p. 796, cited under Sec. 7713.

(1917), p. 330, cited under Sec. 7710.

SECTION 7713. At a regular meeting, held between the first Monday in February and the first Monday in August, each board of education shall determine by a majority vote of all members elected the studies to be pursued and which of such text-books so filed shall be used in the schools under its control. But no text-books now in use or hereafter adopted shall be changed, nor any part thereof altered or revised, nor any other text-book be substituted therefor for five years after the date of the selection and adoption

Text books,  
how de-  
termined;  
five-year term.

thereof, as shown by the official records of such boards, except by the consent at a regular meeting, of five-sixths of all members elected thereto. Books so substituted shall be adopted for the full term of five years.

HISTORY.—R. S. § 4020-14; 92 v. 282; 99 v. 460, § 5.

A county board of education has no power to adopt a text book and therefore any recommendations to it of text books should in turn be referred to the various district boards of education of the county school district. *Op. Atty. Gen.* (1917), p. 1446.

It does not become the mandatory duty of a board of education under the provisions of section 7713, G. C., to determine or redetermine what text books shall be used in the schools under its control, solely by reason of the fact that five years have elapsed since such book or books were first adopted.

No other officer or authority may determine what text books shall be used in the schools of any district except in case of failure of the board of education to make available to all the youth of school age of the district lawful text books as required by sections 7714 and 7715, G. C.

After a text book or text books are lawfully adopted, so long as the same are made available to all the youth of school age of the district according to the provisions of sections 7714 and 7715, G. C., they continue to be the lawful text books to be used in the schools of such district.

When five years or more have elapsed since the last preceding adoption of a text book, the board of education of the district may, at a regular meeting held between the first Monday of February and the first Monday of August of any year, by a majority vote of the members elected thereto, adopt another text book on the same subject to be used in the schools of the district. *Op. Atty. Gen.* (1916), p. 796.

See Opinions of Attorney General as follows:

(1917), p. 330, cited under Sec. 7710.

(1915), p. 1939, cited under Sec. 7709.

No. 2713, (1921), cited under Sec. 7709.

No. 2392, (1921), cited under Sec. 7645.

Text-books,  
of whom  
ordered.

SECTION 7714. Each board of education shall cause it to be ascertained, and at a regular meeting determine which, and the number of each of such books the schools under its charge require, and cause an order to be drawn for the amount in favor of the clerk of the board of education, payable out of the contingent fund. Such clerk at once shall order the books so agreed upon by the board, of the publisher, who on the receipt of such order must ship them to the clerk without delay. He forthwith shall examine the books, and, if found right and in accordance with the order, remit the amount to the publisher. The board of education must pay all charges for the transportation of the books out of the school contingent fund. But if such boards of education at any time can secure of the publishers books at less than such maximum price, they shall do so, and without unnecessary delay may make effort to secure such lower price before adopting any particular text-book.

HISTORY.—R. S. § 4020-14; 92 v. 282; 99 v. 460, § 5.

See Opinions of Attorney General as follows:

(1916), p. 796, cited under Sec. 7713.

(1915), p. 1939, cited under Sec. 7709.



SECTION 7715. Each board of education shall make all necessary provisions and arrangements to place the books so purchased within easy reach of and accessible to all the pupils in their district. For that purpose it may make such contracts, and take such security as it deems necessary, for the custody, care and sale of such books and accounting for the proceeds; but not to exceed ten per cent. of the cost price shall be paid therefor. Such books must be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent. therefor added. The proceeds of sales shall be paid into the contingent fund of such district. Boards also may contract with local retail dealers to furnish such books at prices above specified, the board being still responsible to the publishers for all books purchased by it.

Board of education, power and duties of.

HISTORY.—R. S. § 4020-14; 92 v. 282; 99 v. 460, § 5.

See Opinions of Attorney General as follows:

(1915), p. 1939, cited under Sec. 7709.

(1916), p. 796, cited under Sec. 7713.

SECTION 7716. When pupils remove from any district, and have text-books of the kind adopted in such district and not the kind adopted in the district to which they remove, and wish to dispose of them, the board of the district from which they remove, if requested, shall purchase them at the fair value thereof, and resell them as other books. Nothing herein shall prevent the board of education from furnishing free books to pupils as provided by law.

Old books, purchase of.

HISTORY.—R. S. § 4020-14; 92 v. 282; 99 v. 460, § 5.

See Opinions of Attorney General (1915), p. 1939, cited under Sec. 7709.

SECTION 7718. A superintendent, supervisor, principal or teacher employed by any board of education in the state shall not act as sales agent, either directly or indirectly, for any person, firm or corporation whose school text-books are filed with the superintendent of public instruction as provided by law, or for school apparatus or equipment of any kind for use in the public schools of the state. A violation of this provision shall work a forfeiture of their certificates to teach in the public schools of Ohio.

Who shall not be sales agent for text books or supplies.

HISTORY.—R. S. § 4020-14; 92 v. 282; 99 v. 460, § 5; 106 v. 447; 104 v. 225 (231).

A teacher employed by a board of education in Ohio shall not act as a sales agent, in the state of Missouri, for any person, firm or corporation whose school books are filed with the superintendent of public instruction as provided by law. Op. Atty. Gen. (1917), p. 1074.

A principal or teacher in a public school is employed within the meaning of the provision of section 7718, G. C., from the date of his acceptance of his appointment by the board of education of the school district and for the full term for which such appointment is made. Op. Atty. Gen. (1915), p. 2089.

See Opinions of Attorney General as follows:

(1916), p. 863, cited under Sec. 7712.

(1917), p. 1187, cited under Sec. 7703.

Care and  
preservation  
of books.

**SECTION 7720.** During the vacations of schools, or when they are not in session such books shall be taken care of in the same manner that maps, globes, dictionaries and other school apparatus are cared for and preserved.

HISTORY.—R. S. § 4020-16; 89 v. 241, § 2.

Physical  
culture in  
schools.

**SECTION 7721.** Physical training shall be included in the branches regularly to be taught in public schools in city school districts, and in all educational institutions supported wholly or in part by money received from the state. Boards of education of city school districts, and boards of such educational institutions must make provisions in the schools and institutions under their jurisdiction for teaching physical training; and adopt such methods as will adapt it to the capacity of pupils in the various grades therein. Other boards may make such provisions. The curriculum in all normal schools of the state shall contain a regular course on physical education.

HISTORY.—R. S. § 4020-17; 89 v. 276; 97 v. 364, § 1.

Boards of education cannot establish military training in public schools under section 7721 General Code of existing law.

All courses of study in high schools must be in compliance with section 7649 General Code.

A pupil cannot be discriminated against in his general standing in school because he does not join a military unit in such school.

There is no provision in law for a board of education to purchase military ordnance or pay expenses of physical training teachers at a military camp. Op. Atty. Gen. (1919), p. 653.

See Opinions of Attorney General (1919), p. 947, cited under Sec. 7821.

Powers of  
board of edu-  
cation, as to  
manual train-  
ing, etc.

**SECTION 7722.** Any board of education may establish and maintain manual training, domestic science, and commercial departments; agricultural, industrial, vocational and trades schools, also kindergartens, in connection with the public school system; and pay the expenses of establishing and maintaining such schools from the public school funds, as other school expenses are paid.

HISTORY.—R. S. § 4020-18; 84 v. 92; 97 v. 364; 100 v. 17, § 1.

School savings  
banks; duties  
of principal  
or superin-  
tendent.

**SECTION 7722-1.** That it shall be lawful for the principal or superintendent of any public school or schools in the state of Ohio, or for any person designated for that purpose by the board of education or other school authority under which such school shall be, to collect once a week, or from time to time, small amounts of savings from the pupils of said school, the same to be deposited by said principal or superintendent or designated person on the day of collection in some savings bank, or building and loan associations, trust company, state or national bank, located in the school district and having an interest department. These moneys shall be placed to the credit of the respective pupils from whom the money shall be collected, or, if the amount collected at any one time shall be deemed insufficient for the opening of individual accounts, in the names of said principal or superintendent or designated person, in trust, and

to be by him eventually transferred to the credit of the respective pupils to whom the same belongs. In the meantime, said principal or superintendent, or designated person shall furnish to the bank or institution a list giving the names, signatures, addresses, ages, places of birth, parents' names, and such other data concerning the respective pupils as the savings bank or institution may require, and it shall be lawful to use the words "system of school savings banks" or "school savings banks," "system of school savings" in circulars, reports and other printed or written matter used in connection with the purposes of this section.

HISTORY.—107 v. 597, § 1.

So-called "School Savings Banks" under the act of March 20, 1917, are not subject to the supervision of the banking department.

The state may be the obligee in the bond provided in said act to be given by the person designated to make the collections of deposits under G. C. section 6. Op. Atty. Gen. 1917, p. 2298.

SECTION 7722-2. The board of education shall provide by resolution for the giving of bond by the principal or superintendent of any public school or schools in the state of Ohio, or any person designated for the purpose of making the collections, as provided for in section 1, and also may require the depository to give bond. If a bonding company or other corporate surety is offered on said bonds, the premium therefor may be paid by the board of education.

Bond of principal or superintendent.

HISTORY.—107 v. 597 (598), § 2.

See Opinions of Attorney General (1917), p. 2298, cited under Sec. 7722-1.

SECTION 7723. The nature of alcoholic drinks and other narcotics, and their effects on the human system, in connection with the various divisions of physiology and hygiene, shall be included in the branches to be regularly taught in the common schools of the state, and in all educational institutions supported wholly, or in part, by money from the state.

Instruction as to effect of alcoholic drinks on the human system.

HISTORY.—R. S. § 4020-23; 94 v. 396, § 1; 85 v. 213.

SECTION 7724. Boards of education, and boards of such educational institutions shall make suitable provisions for this instruction in the schools and institutions under their respective jurisdictions, giving definite time and place therefor in the regular course of study; adopt such methods as will adapt it to the capacity of pupils in the various grades; and to corresponding classes as found in ungraded schools. The same tests for promotion shall be required in this as in other branches.

Provision therefor.

HISTORY.—R. S. § 4020-23; 94 v. 396, § 1; 85 v. 213.

SECTION 7724-I. It shall be the duty of each teacher in the public schools of the state to devote not less than thirty minutes in each month, during the time such school is in session, for the purpose of instructing the pupils thereof as to ways and means of preventing accidents.

Instruction in preventing accidents.

HISTORY.—103 v. 134, § 1.



Manual of instruction to be provided.

SECTION 7724-2. The superintendent of public instruction shall prepare, publish and distribute, at the expense of the state, a manual conveniently arranged in chapters or lessons for the guidance of teachers in carrying out the provisions of this act [G. C. §§ 7724-1 to 7724-2].

HISTORY.—103 v. 134, § 2.

Instruction of teachers.

SECTION 7725. In all teachers' institutes, normal schools and teachers' training classes, hereafter established by the state, adequate time and attention shall be given to instruction in the best methods of teaching such branch. (This refers back to Sec. 7723.)

HISTORY.—R. S. § 4020-24; 94 v. 396, § 2; 85 v. 213.

Examination of teachers required.

SECTION 7726. No certificate shall be granted to any person to teach in the common schools, or in any educational institution supported by the state who does not pass a satisfactory examination on such subject, and the best methods of teaching it.

(Reference is to Sec. 7723.)

HISTORY.—R. S. § 4020-24; 94 v. 396, § 2; 85 v. 213.

Duties of superintendent.

SECTION 7727. The superintendent of public instruction shall see that the provisions in the next two preceding sections relating to county teachers' institutes, and schools and classes by whatever name hereafter established for training teachers, and the examination of teachers, are carried out. Each year, he must make full report of the enforcement of such sections in connection with his annual report.

HISTORY.—R. S. § 4020-24; 85 v. 213; 94 v. 396, § 2; 104 v. 225 (231).

Forfeiture for failure to give instruction.

SECTION 7728. Any school official, or employe in any way concerned, in the enforcement of the next five preceding sections who wilfully refuses or neglects to provide for, or to give the instruction as to the nature and effect of alcoholic drinks and other narcotics, hereinbefore required, shall forfeit and pay for each offense the sum of twenty-five dollars. Mayors, justices of the peace and probate judges shall have concurrent jurisdiction with the common pleas court to try all such offenses. All forfeitures collected hereunder must be paid into the general county school fund of the county in which it was collected.

HISTORY.—R. S. § 4020-25; 94 v. 397, § 3; 85 v. 213.

When rural or village school may be suspended; transfer and conveyance of pupils; how re-established.

SECTION 7730. The board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause, and teachers' contracts shall thereby be terminated after such suspension. Whenever the average daily attendance of any school in the school district for the preceding school year has been below ten the county board of education may, before the first day of August, direct the suspension and thereupon the board of education of the village or rural

school district shall suspend such school. Whenever any school is suspended the board of education of the district shall at once provide for the assignment of the pupils residing within the territory of the suspended school to such other school or schools as may be named by the said board of education. Upon such suspension the board of education in authority over such village or rural school shall provide for the transportation of all pupils so assigned who reside in the territory of the suspended school and who live more than two miles by the nearest traveled highway from the school to which they have been assigned, to a public school in the rural or village district or to a public school in another district, except when in the judgment of such board of education confirmed by the judgment of the county board of education such transportation is unnecessary.

Ten days' notice of such suspension shall be posted in five conspicuous places within such village or rural school district by the board of education after the resolution providing for such suspension is adopted. Wherever such suspension is had on the direction of the county board of education then upon the direction of such county board, or upon the finding by the board of education ordering such suspension that such school ought to be re-established, such school shall be re-established.

Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension.

How school  
may be re-  
established.

**HISTORY.**—R. S. § 3922; 75 v. 120, § 20; 89 v. 94; 93 v. 47; 97 v. 344; 99 v. 203; 104 v. 133 (139); 106 v. 396 (398); 107 v. 638; 108 v. Pt. I 431 (434); 108 v. Pt. I 704 (708); 108 v. Pt. II 1170 (1172); 109 v. 288. For the operation of this section as amended in 108 v. Pt. II 1170 (1172), sec. 108 v. Pt. II 1170 (1174), §§ 2 and 3.

The board of education of any rural or village school district may suspend temporarily or permanently at any time any or all schools in such village or rural school district because of a disadvantageous location or any other cause.

As to what constitutes sufficient cause to suspend temporarily or permanently a school in a village or rural school district, it is for the board of education of such district in its discretion to say.

Where a board of education has decided to suspend such school, either temporarily or permanently and where such school is suspended during the school term, the contract of the teacher is thereby terminated by law since such contract was made with knowledge of the provisions appearing in section 7730, General Code. *Op. Atty. Gen.* (1919), p. 1593.

Where a board of education, acting under the provisions of section 7684 General Code assigns all the pupils of a school district to another district school or schools, such assignment operates as a suspension of the school in question even though formal action re-

garding suspension was not taken under section 7730 General Code; and where the district school has been closed in this manner, the patrons of the district have recourse to the provisions of section 7730 General Code, providing for the presentation to the board of education of a petition \* \* \* (Remainder of summary of opinion omitted as not applicable to law in present form.—Ed.) Op. Atty. Gen. (1919), p. 1536.

The literal meaning of the words "may" and "shall" is not always conclusive in the construction of statutes in which they are employed; and one should be regarded as having the meaning of the other when that is required to give effect to other language found in the statute, or to carry out the purpose of the legislature as it may appear from a general view of the statute in consideration.

Where power is granted by statute to public officers by permissive language, coupled with a provision for invoking the exercise of such power by a petition of voters, or of any part of the public, such language will be regarded as peremptory unless a contrary construction is manifestly required.

Where the board of education of a rural township district suspends a one-room elementary school and assigns the pupils of the territory to a school maintained by a state normal college, with the approval and consent of the governing powers of said institution, which said school furnishes a proper course of study for such pupils, and the educational advantages are equal to those they would have received had they been assigned to another school and such pupils in being transported to said school are not subject to unreasonable inconvenience or hardship, such arrangement is a substantial compliance with the requirements of section 7730, G. C., and the expense of said transportation should be borne by said rural district. Op. Atty. Gen. (1920), p. 386.

Where the wife of a member of a board of education appears as a party to a contract with such board of education such contract is in violation of section 4757, G. C., and is null and void.

Where a school has been suspended by a board of education under the provisions of section 7730, G. C., the transportation provided by the board of education must be to a public school and not to a school privately supported. Op. Atty. Gen. (1920), p. 1143.

Provision must be made for the transportation of all pupils of legal school age who reside in the territory of a suspended school and live more than two miles by the nearest traveled highway from the nearest school or the school to which they have been assigned. *Patton et al v. State ex rel*, 30 O. C. A. 302.

Under the present school code of Ohio there is no provision for what were known in the past as sub-districts, and the sub-district school is, therefore, now without authority or legal existence.

Provision must be made for the transportation of all pupils of legal school age who reside in the territory of a suspended school and live more than two miles by the nearest traveled highway from the nearest school, or the school to which they have been assigned. *Patton et al, Board of Education of Dover Township et al v. The State, ex rel., Hershey et al.* 14 Ohio App. (Decided, June 11, 1919).

**SECTION 7730-1.** In order to protect the rights of the petitioners mentioned in section 7730, where a school has been suspended through either or any of the processes mentioned in such section, the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school unless the said school building has been condemned for school use by the chief deputy of the division of workshops, factories and public buildings. Failure to use the school

When and how school property, where school suspended, may be sold.



building for school purposes within the four years following the resolution of suspension of such school shall be considered a legal abandonment of such school and the school building and real estate in which the board of education has legal title may be disposed of by such board of education according to law.

HISTORY.—108 v. Pt. II 1170 (1173).

The provisions of House Bill 592 (Sec. 7587-1, 7587-2, 7587-3, 7587-4 and 7587-5, G. C., 108 Ohio Laws, Part II, p. 1132) providing for a replacement fund, would not change or modify the provisions of section 7603 that moneys received from the sale of school property sold in compliance with sections 4756 and 7730-1, G. C., should be placed in the contingent fund of the board of education. Op. Atty. Gen. No. 1865, February 21, 1921.

SECTION 7731. In all city, exempted village, rural and village school districts where resident elementary school pupils live more than two miles from the school to which they are assigned the board of education shall provide transportation for such pupils to and from such school except when in the judgment of such board of education, confirmed, in the case of a school district of the county school district, by the judgment of the county board of education, or, in the case of a city or exempted village school district, by the judgment of the probate judge, such transportation is unnecessary. The transportation for pupils living less than two miles from the school house by the nearest practicable route for travel accessible to such pupils and the transportation of pupils who are pursuing high school branches shall be optional with the board of education, except as provided in section 7749, General Code.

When board shall provide transportation.

When transportation of pupils is provided the conveyance shall be run on a time schedule that shall be adopted and put in force by the board of education not later than ten days after the beginning of the school term and it must pass within one-half mile of the residence of such pupils or the private entrance thereto. When local boards of education neglect or refuse to provide transportation for pupils the county board of education shall provide such transportation and the cost thereof shall be paid as provided in section 7610-1, General Code.

Time schedule of conveyance.

HISTORY.—R. S. § 3922; 75 v. 120, § 20; 89 v. 94; 93 v. 47; 97 v. 344; 99 v. 203; 104 v. 133 (140); 107 v. 621 (625); 109 v. 289.

One who entered into a contract, entire in its nature, with a board of education, providing that he should convey pupils to and from school during a school year, of eight and one-half months, at a stipulated compensation payable monthly, is entitled to such compensation during a period of suspension of the schools by the board of education, though it be upon the direction of the board of health as a precautionary health measure, there being no provision in the contract relative to such contingency and it appearing that the suspension was temporary and the person so employed was required to and did continue ready and willing at all times to perform his duties under the contract, which he in fact did upon the resumption of school after such period of suspension. *Montgomery v. Board of Education*, 102 O. S. p. 189.

A party hauling pupils to and from school under an entire contract for the school year is not subject to deduction of pay for the

time the schools are closed by a temporary order, indefinite as to time, of the board of health where it is conceded that such party during said period holds himself in readiness to perform the contract.

The fact that compensation under said contract is payable by the month, and that the temporary order remained in force for one month, does not affect the result. *Cashdollar v. Clotts et al.*, 31 O. C. A. 503.

Section 7731 under the law providing that in all rural and village school districts transportation shall be provided for pupils who live more than two miles from the nearest school house, distance is to be computed by including the distance from the exit of the curtilage by the most direct path or way to the point where it intersects the highway leading to the school house. *State, ex rel., v. Board of Education*. 21 O. N. P. (N. S.) 126.

Section 7731, General Code (107 O. L., 625), makes the county board of education the real party defendant in an action to compel the conveyance of pupils of school age residing within a school district to some other school within the rural school district, and failure to make said county board a party defendant leaves the petition open to demurrer.

Furthermore, the absence of any evidence of notice to the county board, or of knowledge on its part, of refusal by the township board to convey the pupils in question to some school in said district, is fatal to an action in mandamus to compel provision of such service, under the rule that in a proceeding to compel an officer to do an act, which it is claimed the law enjoins upon him, the existence must be shown of all facts necessary to put him in default. *Siber et al. v. State, ex rel.* 9 App. 450.

Provisions must be made for the transportation of all pupils of legal school age who reside in the territory of a suspended school and live more than 2 miles by the nearest traveled highway from the nearest school or the school to which they have been assigned. *Patton v. State, ex rel Hershey*. 14 App. 64.

The statutory requirement that boards of education of rural and village school districts shall transport to and from the school house pupils of the district who live more than 2 miles from the nearest school in the district in which they reside, does not require that such transportation be furnished to children living in the district who are attending a nearer school in another district, and mandamus does not lie to compel provision of such transportation. *State, ex rel Keller v. Board of Education*. 11 App. 298.

By section 7731-1, General Code (108 O. L., Pt. I, 109) the designation of places as depots to gather children is made optional with a board of education. If this discretion has been exercised and certain places have been designated as depots, then shelter is required to be provided for such children. *State, ex rel v. Board of Education*, 102 O. S. p. 446.

Under existing law county boards of education are without authority to purchase wagons for the conveyance of school children, such conveyances to remain the property of the county board and to be assigned by the county board to various school districts within the county school districts. *Op. Atty. Gen* (1919), p. 1243

Distance from the residence of pupils to the school house to which they are assigned must be measured over the nearest traveled public highway, that is, the highway that is at all times practicable, convenient and accessible to such pupils, and one that can be used by vehicles of travel. *Op. Atty. Gen.* (1919), p. 1439.

A public highway along which the measurement is made to calculate the distance from a pupil's home to school must be one opened to the public and not simply dedicated and platted. *Op Atty. Gen* (1917), p. 297.

When a board of education provides transportation for pupils under section 7731, General Code (107 O. L., 625) and a conveyance is furnished which passes within one-half mile of the pupil's residence or private entrance thereto, such board has fully complied with the provisions of that section. *State, ex rel., v. Board of Education*, 102 O. S. 446.

Where a rural school district or a village school district, acting under section 7731-4 G. C., makes an agreement with a parent or other person in charge of a child for the transportation of such child to school, and the district owns neither the vehicle nor the means of locomotion, only one-third the amount paid for transporting such pupils shall constitute the "personal service expense" as defined in section 7787 G. C.

In the annual distribution of school funds by the county auditor after each semi-annual settlement with the county treasurer, the expense that may be attributed to the transportation of pupils in a village district or a rural school district shall be fifty per cent. of the "personal service expense" incurred in such transportation, as defined in section 7787 G. C. Op. Atty. Gen. No. 2804, Jan. 20, 1922.

Except in a centralized school district (7749 G. C.) the transportation of an elementary pupil to school by a board of education is optional (7731 G. C.) unless such pupil has been assigned to a school "without the district" distant more than two miles from the residence of the child (7764 G. C.). (Above paragraph to be read in connection with paragraph following.—Ed.)

Where a local board of education decides in its discretion that the transportation of an elementary pupil residing more than two miles from a school within the district is "unnecessary," such judgment of the local board must be confirmed by the county board of education, or the probate court, as the case may be; and if not so confirmed the transportation of an elementary pupil resident more than two miles from school is mandatory (7731 G. C.).

The transportation of elementary pupils residing two miles or less from school is optional with a board of education (7731) except in a centralized school district (7749 G. C.).

The transportation of a pupil eligible to high school by a board of education is optional (7731 G. C.) unless (a) the pupil resides in a district as described in 7749 G. C., or (b) has been assigned to a high school "without the district" and distant more than four miles from the residence of the pupil (7764 G. C.).

Every board of education must provide "work in high school branches" at some school within four miles of the residence of any pupil eligible to high school (7764-1 G. C.); but if the local board rather than furnish such work in its local district desired (a) to provide transportation to any recognized high school, or (b) pay for transportation under 7731-4 G. C., instead of directly providing it, or (c) pay for the pupil's room and board, or part of same, in an amount less than it would cost as provided in 7749-2 G. C., the local board has the privilege or option of thus furnishing "high school work." Op. Atty. Gen. No. 2949, Mar. 28, 1922.

SECTION 7731-1. The boards of education of city, exempted village, village or rural school districts may by resolution designate certain places as depots from which to gather children for transportation to school, when such districts provide transportation. The places designated as depots shall be provided with a shelter and be made comfortable during cold and stormy weather. Such depots shall in no case be more than one-half mile from the residence or the private entrance to such residence of pupils who are compelled to use such depots.

Depots  
designated.

HISTORY.—106 v. 496; 108 v. Pt. I 704 (709); 109 v. 554.

By section 7731-1, General Code (108 O. L., Pt. I, 709), the designation of places as depots to gather children is made optional with a board of education. If this discretion has been exercised and certain places have been designated as depots, then shelter is required to be provided for such children. State, ex rel., v. Board of Education. 102 O. S., 446.



Under the provisions of section 7731-1 G. C., the designating of a depot for pupils on a transportation route is discretionary with the board of education; where such board has by resolution designated certain places as depots, from which to gather children for transportation to school, such depots must be provided with a shelter and be made comfortable during cold and stormy weather, and shall in no case be located more than one-half mile from the private entrance to the residence of the children compelled to use such depots. Op. Atty Gen. No. 1793, Jan. 15, 1921.

Vehicles shall be brought to full stop before crossing railroad.

SECTION 7731-2. It shall be the duty of the driver in charge of a vehicle engaged in the transportation of children to bring the vehicle to a full stop before crossing the tracks of any railroad or interurban electric line and not proceed across such tracks until absolutely certain that no car or train is approaching from either direction.

The vehicle shall be of such construction as to afford the driver thereof a practically unobstructed view of the roadway ahead, and also to his right and left.

HISTORY.—109 v. 289.

Qualifications of driver of vehicle; bond.

SECTION 7731-3. When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least eighteen years of age and is of good moral character and is qualified for such position. Provided, however, that a county board of education may grant such certificate to a boy who is at least sixteen years of age and who is attending high school. Any certificate may be revoked by the authority granting same on proof that the holder thereof has been guilty of improper conduct or of neglect of duty and the said driver's contract shall be thereby terminated and rendered null and void.

HISTORY.—109 v. 289.

When parent may be employed to convey child or children; compensation.

SECTION 7731-4. If a local board deems the transportation of certain children to school by school conveyance impracticable and is unable to secure what is deemed a reasonable offer for the transportation of such children the local board shall so report to the county board of education. If the county board of education deems such transportation by school conveyance practicable or the offers reasonable they shall so inform the local board and transportation shall be provided by such local board. If, however, the county board of education agrees with the view of the local board it shall be deemed compliance with the provisions of sections 7730 and 7731, General Code, by such local board if such board agrees to pay the parent or other person in charge of the child or children for the transportation of such child or children to school the following amounts for each day of actual transportation:

For one child in family transported not more than three miles, seventy-five cents.

For one child in family transported more than three and not more than four miles, one dollar.

For one child in family transported more than four miles, one dollar and fifty cents.

For each additional child in a family, in every case, twenty-five cents.

For transportation to school only or from school only one-half of the above amounts.

It shall be the duty of the teacher or teachers in charge of such children to keep an accurate account of the days they are transported to and from school. A failure of a parent or guardian to arrange to have his child transported to school, or his failure to have the child attend on the ground that the transportation is not supplied cannot be plead as an excuse for the failure of such parent or guardian to send such child to school or for the failure of the child to attend school.

Accurate days  
of attendance  
kept by teacher.

HISTORY.—109 v. 290.

See opinions of Attorney General. No. 2693 (1921), cited under Sec. 7764-1.

SECTION 7733. At its option, the board of education in any village school district may provide for the conveyance of the pupils of the district or any adjoining district, to the school or schools of the district, the expense of conveyance to be paid from the school funds of the district in which such pupils reside. But such boards as so provide transportation, shall not be required to transport pupils living less than one mile from the school house or houses.

Conveyance  
of pupils.

HISTORY.—99 v. 234, § 1; 101 v. 307.

A party hauling pupils to and from school under the entire contract for the school year is not subject to deduction for the time the schools are closed by a temporary order of the board of health, indefinite as to time, where it is conceded that such party during said period held himself in readiness to perform the contract.

The fact that compensation under said contract is payable by the month, and that the temporary order remained in force for one month, does not affect the result. *Cashdollar v. Board of Education*. 12 App. 298.

One who entered into a contract, entire in its nature, with a board of education, providing that he should convey pupils to and from school during a school year, of eight and one-half months, at a stipulated compensation payable monthly, is entitled to such compensation during a period of suspension of the schools by the board of education, though it be upon the discretion of the board of health as a precautionary health measure, there being no provision in the contract relative to such contingency and it appearing that the suspension was temporary and the person so employed was required to and did continue ready and willing at all times to perform his duties under the contract, which he in fact did upon the resumption of school after such period of suspension. *Montgomery v. Board of Education*. 102 O. S. 189. (Mar. 29, 1921).

SECTION 7734. The board of any district may contract with the board of another district for the admission of pupils into any school in such other district, on terms agreed upon by such boards. The expense so incurred shall be paid out of the school funds of the district sending such pupils.

Pupils may be  
sent from one  
district to  
another.

HISTORY.—R. S. § 4022; 73 v. 243, § 64.

As to who may be admitted to public school, see G. C. § 7681.

A board of education of any district may contract with the board of another district for the admission of pupils into any school in another district. Op. Atty. Gen. (1916), p. 1617.

Tuition contracts and agreements must be made between boards of education representing school districts and any school privately supported cannot collect tuition from a board of education (sections 7750, 7752, General Code), and tuition can be paid only to boards of education within the state of Ohio. Op. Atty. Gen. (1919), p. 497.

Where a pupil lives less than one and one-half miles from the school house of the district wherein such pupil lives, there is no liability on the part of the board of education of such district to pay the tuition of pupils attending school in another adjoining district, in the absence of any agreement to pay such tuition in accordance with section 7734, General Code. In the absence of any contract for the payment of tuition, the father of such child may be held for a reasonable amount in payment of such tuition.

The distance between the home of the pupil and the school house of the district wherein such pupil resides, should be determined by the nearest route from such home to such school house as determined by section 7735 G. C. Op. Atty. Gen. (1914), p. 1783.

Under the provisions of section 7734 G. C., the board of education of a school district may lawfully contract with the board of education of another district of districts for the admission of its pupils into one or more of the schools of such other districts and the amount of tuition for attendance of pupils may be fixed by the terms of the contract agreed upon by the boards of education of the several districts.

Where the attendance and amount of tuition are determined by the terms of a contract made between the boards of education of such districts, the provisions of section 7736 G. C. and section 7747 G. C. are not applicable. There is no requirement in law that the amount of tuition paid to one foreign board of education need be exactly the same amount paid to another board of education where a contract is had with more than one board.

Where a board of education enters into a contract or contracts with other boards of education for the tutoring of its pupils, and the schedule of pay for such tuition is later desired to be changed, a new contract or contracts should be prepared and agreed upon, for the reason that the limit of the liability resting upon a board of education to pay a pupil's tuition is the maximum amount named in any of the board's tuition contracts. In cases where no agreement as to paying the tuition of pupils is entered into, the school to be attended by a pupil eligible to high school (in cases in which the pupil is not required to attend high school in his own district.—Ed.) can be selected by the pupil holding a diploma. Op. Atty. Gen. (1920), p. 165.

See Opinions of Attorney General as follows:

(1918), p. 927, cited under Sec. 7684.

(1916), p. 1471, cited under Sec. 7735.

No. 2360 (1921), cited under Sec. 7749-1.

Attendance at  
nearest school.

SECTION 7735. When pupils live more than one and one-half miles from the school to which they are assigned in the district where they reside, they may attend a nearer school in the same district, or if there be none nearer therein, then the nearest school in another school district, in all grades below the high school. In such cases the board of education of the district in which they reside must pay the tuition of such pupils without an agreement to that effect. But a board of education shall not collect tuition for such attendance until after notice thereof has been given to the



board of education of the district where the pupils reside. Nothing herein shall require the consent of the board of education of the district where the pupils reside, to such attendance.

HISTORY.—R. S. § 4022a; 89 v. 233; 90 v. 295; 91 v. 54; 92 v. 132; 95 v. 516; 97 v. 384.

The statutory provision "or transportation of pupils provided" does not constitute a defense against payment of such a bill for tuition, where the furnishing of transportation was discussed and perhaps proffered, but was not actually provided. Board of Education. 20 O. N. P. (N. S.) 193.

In assigning pupils to the public school nearest to their residence, the distance should be measured by the most direct path from the school house door to the middle of the highway and thence to the said residence: Board of Education v. Board of Education, 15 O. C. C. (N. S.) 521, 24 O. C. D. 213 [affirming Board of Education, 11 O. N. P. (N. S.) 286, 23 O. D. (N. P.) 698, and affirmed, without opinion, Board of Education v. Board of Education, 88 O. S. 549.]

The board of education of one township rural school district may contract with the board of education of another township rural school district for the admission of pupils of the former district into the schools of the latter district and when such contract is made the board of education of the former district may assign pupils therein to the schools of the latter district and compel the attendance of the pupils so assigned, who are subject to the compulsory education laws, to the schools to which they are assigned subject to the rights of such pupils under the provisions of section 7735 G. C. Op. Atty. Gen. (1916), p. 1471.

Tuition for non-resident pupils, provided for by section 7735 G. C., is not an obligation against the school district of the residence of such pupils until after notice of such attendance is filed with the board of education of such district.

Notice must be given to the board of education of a school district in which pupils reside before tuition for such pupils attending school in another district, as provided by section 7735 G. C. becomes an obligation against the district of the residence of such pupils. Op. Atty. Gen. (1917), p. 12.

The notice required by section 7735, which permits children residing more than one mile and a half from the school to which they are assigned to attend a nearer school in another district, is a notice from the board of education of the district in which the children are attending to the board of the district in which they reside that a claim will be made for their tuition, the purpose of such notice being to give the debtor broad opportunity to settle the claim before the expense of suit is incurred.

Knowledge of the board of the district in which the children reside of the fact that they are attending school in an adjoining district and acquiescence therein is sufficient to satisfy the requirement as to notice. Op. Atty. Gen. (1919), p. 565.

Where a pupil lives more than one and one-half miles from the school to which he has been assigned in his own district, and there is located a nearer school in his own district, but such pupil attends a school in an adjoining district, which school in the adjoining district, although nearer than the school to which the pupil is assigned, is farther than the school which the pupil might have attended in his own district, under such circumstances tuition cannot be collected from the board of education of the district of the residence of such pupil by the board of education of the district where such pupil attended school.

Where a pupil lives more than one and one-half miles from the school to which he has been assigned in his own district, but attends school in another district, which is farther from the residence of such pupil than the school in his own district, the board of education of such district where such pupil attends school can-

not collect tuition from the board of education of the district where the pupil resides. Op. Atty. Gen. (1918), p. 1157.

See Opinions of Attorney General as follows:

(1916), p. 1617, cited under Sec. 7734.

(1914), p. 1783, cited under Sec. 7734.

How per  
capita tuition  
ascertained  
and paid.

SECTION 7736. Such tuition shall be paid from either the tuition or the contingent fund, and the amount per capita must be ascertained by dividing the total expenses of conducting the elementary schools of the district attended, exclusive of permanent improvements and repairs, said total expenses to include interest charges not exceeding five per cent per annum and depreciation charges not exceeding five per cent per annum, based upon the actual value of all property used in conducting said elementary school by the net annual enrollment in the elementary schools of the district, such amount to be computed by the school month. In computing such total expenses of conducting the elementary schools of such district the amount of the state common school fund and the proceeds of the state school levy retained in the county, apportioned to such district on account of teachers and other persons employed in such elementary schools, the amount of said state common school fund apportioned thereto on account of transportation of pupils, and the amount of such funds apportioned thereto on account of aggregate days of attendance of pupils shall be deducted from the gross expenses of conducting such schools. An attendance any part of a school month will create a liability for the whole school month. Unless the annual school session is terminated before the end of a full school month.

HISTORY.—R. S. § 4022a; 89 v. 233; 90 v. 295; 91 v. 54; 92 v. 132; 95 v. 516; 97 v. 364; 107 v. 621 (625); 108 v. Pt. II 1303 (1310); 109 v. 374. For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

See Opinions of Attorney General as follows:

(1920), p. 165, cited under Sec. 7734.

No. 2220 (1921), cited under Sec. 7896-55.

Not to apply  
when schools  
are centralized.

SECTION 7737. When the schools of a district are centralized or transportation of pupils provided, the provisions of the next two preceding sections shall not apply.

HISTORY.—R. S. § 4022a; 89 v. 233; 90 v. 295; 91 v. 54; 92 v. 132; 95 v. 516; 97 v. 364.

Sufficient  
school accom-  
modations to  
be provided.

SECTION 7738. Every board of education in this state must provide sufficient accommodations in the public schools for all children in their districts compelled to attend the public schools under the provisions of this chapter. Authority to levy the tax and raise the money necessary for such purpose, is hereby given the proper officers charged with such duty under the law.

HISTORY.—R. S. § 4022-13; 90 v. 291, § 13; 95 v. 622, § 4022-13.

Free school-  
books.

SECTION 7739. Each board of education may furnish, free of charge, school-books, necessary to enable the parent or guardian, without expense therefor, to comply with the requirements of this chapter, to be paid for out of the

contingent fund at its disposal. Such levy each year, in addition if necessary to that otherwise authorized, as may be necessary to furnish such schoolbooks free of charge to all the pupils attending the public schools, is hereby authorized. But pupils wholly or in part supplied with necessary school-books shall be supplied only as other or new books are needed. All school-books furnished as herein provided, shall be the property of the district, and loaned to the pupils on such terms and conditions as each such board prescribes.

HISTORY.—R. S. § 4026; 91 v. 260; 87 v. 317; 74 v. 57, § 4.

The board of education of a school district cannot be compelled to furnish school books free of charge to pupils of a parochial school. Board authorized to purchase only text-books adopted by board. Op. Atty. Gen. (1915), p. 627.

See Opinions of Attorney General (1915), p. 1939, cited under Sec. 7709.

SECTION 7562-1. That the trustees of any township are authorized and empowered to construct, rebuild and repair foot-bridges across the rivers and streams in their respective townships when they may deem it necessary so to do in order to provide convenient means of access to the public schools of their said township by the pupils residing in the school district, wherein a public schoolhouse is located; but in no case shall the cost of the aforesaid construction, rebuilding or repair of any said foot-bridge exceed the sum of one thousand dollars.

Trustees empowered to construct, etc., footbridges as means of access to schools.

HISTORY.—104 v. 198, § 1.

SECTION 7562-2. Said township trustees are authorized to pay the cost of the construction, rebuilding or repair of such said bridges out of any funds unappropriated for any other purpose and in the township treasury. Should there be no funds in the township treasury available for the aforesaid purposes, then the said trustees are authorized and empowered to levy a tax for the purpose of procuring the necessary funds for the construction, rebuilding or repair of said bridges, which said tax shall be levied upon all of the taxable property in said township [township], and shall be certified, levied and collected in the manner prescribed by law for the certification, levy and collection of other township taxes, and the money so raised shall be paid over to the township treasurer and by him paid out on the order of the township trustees certified by the township clerk; provided, however, that said tax shall not be levied until the same has been approved by a majority of the qualified voters of said township voting at any election at which said question shall be submitted.

Submission of question as to tax levy to pay cost.

HISTORY.—104 v. 198, § 2.

SECTION 7562-3. Said election shall be called at a regular meeting of the township trustees and shall be held within thirty days from the date of the resolution of the township trustees calling the same. Twenty days' notice of

Election.



said election shall be given by the posting of notices thereof, by the township clerk, in ten public places of said township, and provisions for the holding of said election shall be made by the deputy state supervisors of elections upon receiving notice, from the clerk of the township, of the date and purpose of said election.

HISTORY.—104 v. 198, § 3.

When tuition paid by board of education; how expenses computed.

SECTION 7747. The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the school month. An attendance any part of the school month shall create a liability for the entire school month, unless the annual session is terminated before the end of a full school month. No more shall be charged per capita than the amount ascertained by dividing the total expenses of conducting the high school attended, exclusive of permanent improvements and repair, said total expenses to include interest charges not exceeding five per cent per annum and depreciation charges not exceeding five per cent per annum, based upon the actual value of all property used in conducting such high school, by the net annual enrollment in the high school.

In computing such total expenses of conducting such high school the amount of the state school levy retained in the county apportioned to such district on account of teachers and other persons employed in such high school, the amount of said common school fund apportioned thereto on account of transportation of high school pupils and the amount of such funds apportioned thereto on account of aggregate days of attendance of high school pupils shall be deducted from the gross expenses of conducting such school.

Certification of pupils eligible to high school.

The district superintendent shall certify to the county superintendent each year the names of all pupils in his supervision district who have completed the elementary school work and are eligible for admission to high school. The county superintendent shall thereupon issue to each pupil so certified a certificate of promotion which shall entitle the holder to admission to any high school. Such certificate shall be furnished by the superintendent of public instruction.

HISTORY.—R. S. § 4029-3; 89 v. 123, § 3; 95 v. 72; 95 v. 218; 100 v. 74; 104 v. 125; 107 v. 621 (625); 108 v. Pt. II 1303 (1310). 109 v. 245; 109 v. 375. For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

School districts maintaining second and third grade high schools, have not reached the maximum levy permitted by law, as provided in section 7748 General Code where the electors in such school district, at a special election held on August 10, 1920, refused to authorize the additional levy allowed under the provisions of section 5649-5 and 5649-5a, submitted at such election under authority of section 3 of House Bill 615 (108 O. L., 1303), and the board of education is not relieved of paying the tuition of graduates eligible to high school who are residents in such school district. Op. Atty. Gen (1920), p. 920.

See Opinions of Attorney General as follows:

No. 2360 (1921), cited under Sec. 7749-1.

(1917), p. 2286, cited under Sec. 7748.

(1917), p. 1790, cited under Sec. 7748.

(1914), p. 1004, cited under Sec. 7748.

(1917), p. 918, cited under Sec. 7748.

(1915), p. 1381, cited under Sec. 7750.

(1920), p. 165, cited under Sec. 7734.

SECTION 7748. A board of education providing a third grade high school as defined by law shall be required to pay the tuition of graduates from such school residing in the district at any first grade high school for two years, or at a second grade high school for one year. Should pupils residing in the district prefer not to attend such third grade high school the board of education of such district shall be required to pay the tuition of such pupils at any first grade high school for four years, or at any second grade high school for three years and a first grade high school for one year. Such a board providing a second grade high school as defined by law shall pay the tuition of graduates residing in the district at any first grade high school for one year; except that, a board maintaining a second or third grade high school is not required to pay such tuition when the maximum levy permitted by law for such district has been reached and all the funds so raised are necessary for the support of the schools of such district. No board of education is required to pay the tuition of any pupil for more than four school years; except that it must pay the tuition of all successful applicants, who have complied with the further provisions hereof, residing more than four miles by the most direct route of public travel, from the high school provided by the board, when such applicants attend a nearer high school, or in lieu of paying such tuition the board of education maintaining a high school may pay for the transportation of the pupils living more than four miles from the said high school, maintained by the said board of education to said high school. Where more than one high school is maintained, by agreement of the board and parent or guardian, pupils may attend either and their transportation shall be so paid. A pupil living in a village or city district who has completed the elementary school course and whose legal residence has been transferred to a rural district in this state before he begins or completes a high school course, shall be entitled to all the rights and privileges of a resident pupil of such district.

Tuition of graduates of third grade high school.

Exception.

Provision for transportation of pupils.

Effect of removal from village or city district.

HISTORY.—R. S. § 4629-3; 89 v. 123, § 3; 95 v. 72; 95 v. 218; 100 v. 74; 101 v. 296; 104 v. 125 (126).

The board of education of a village school district which maintains a third grade high school is obliged to pay the tuition of the graduates of said high school to some other high school of higher grade after their graduation, unless the maximum levy permitted by law has been reached and all the funds so raised are necessary for the support of the schools of such district. Op. Atty. Gen. (1917), p. 1790.

A board of education which maintains no high school, but which has entered into an agreement with a board of education in the same or an adjoining township which does maintain a high

school for the schooling of the high school pupils of the first named board, is not compelled to pay the tuition of pupils of such school district who live more than four miles from the school maintained by the board and who attend high schools other than the one with which the board has the contract, unless the school such pupils attend is a nearer high school. Op. Atty. Gen. (1917), p. 2286.

Adjoining school districts "A" and "B" each maintain third grade high schools. A high school pupil resides in district "A", more than four miles from school, although nearer to it than to the school he attends in district "B". District "A" is not liable for the tuition of said pupil to district "B".

Where any question arises as to the distance a pupil lives from a high school and it is necessary to ascertain same, such distance is measured "by the most direct public highway from the school to the nearest part of the curtilage surrounding the home of the pupil."

Where a high school pupil attends school in a district other than in the district of his residence and where his district is not legally bound to pay his tuition, such tuition may be recovered from the parent or guardian of the pupil, or the pupil, depending on the circumstances. Op. Atty. Gen. (1917), p. 666.

A pupil who completes the course of study prescribed by a board of education is considered a graduate even though his diploma has been withheld from him and the board of education of such pupil's residence must pay his tuition at a high school the same as though he had received said diploma.

A diploma must be granted to any one who completes the curriculum in any high school.

The statute which required a pupil to deliver an oration or declamation, or read an essay at a commencement exercise before such pupil was entitled to a certificate of graduation, has been repealed.

If the board of education has included in its course of study the writing of a thesis and a pupil refuses to write such thesis, the said pupil is not a graduate of such school and is not entitled to his diploma. Op. Atty. Gen. (1918), p. 1327.

A pupil holding a diploma under the provisions of section 7744 G. C. (now repealed) is entitled to the advantages of a high school education as provided in sections 7747 and 7748 G. C.

But he must use these advantages under the limitations set out in section 7748 G. C., and whenever the board of education of the township or district in which he resides establishes a first grade high school within four miles of his residence, he must attend the same; or if he attend another, the said board will not be liable for his tuition. Op. Atty. Gen. (1917), p. 918.

A board of education sending a high school pupil to another district for school purposes, is liable for all the months during which such school attended is operated, provided the pupil attends such school during each and every month that such high school is operated. The board of education which permits high school pupils to attend another district for high school purposes cannot pay the tuition for eight months and then compel the pupils or parents of the pupils to pay for any excess above eight months. Op. Atty. Gen. (1920), p. 959.

A board of education is entitled to tuition from foreign pupils for each and every school month in which there was any attendance, and it is for such board of education to see when its school months begin, counting four school weeks as a school month, starting with the opening date of the school term in September.

Where a school term ends in a fractional part of a month and no service is offered for the remainder of such school month, the charge for tuition should be for the fractional part of the school month during which service was actually available, but where a school is in operation for the whole of a school month, then an attendance for any part of such school month will



create a liability for the whole of such school month. Op. Atty. Gen. (1919), p. 1028.

A board of education maintaining or participating in the maintenance of a second grade high school, is required to pay the tuition of its resident pupils in a first grade high school for a period of but one year. Op. Atty. Gen. (1919), p. 789.

See Opinions of Attorney General as follows:

(1917), p. 2369, cited under Sec. 7791.

No. 2693, (1921), cited under Sec. 7764-1.

(1920), p. 920, cited under Sec. 7747.

**SECTION 7749.** When the elementary schools of any rural school district in which a high school is maintained, are centralized and transportation of pupils is provided, all pupils resident of the rural school district who have completed the elementary school work shall be entitled to transportation to the high school of such rural district, and the board of education thereof shall be exempt from the payment of the tuition of such pupils in any other high school for such a portion of four years as the course of study in the high school maintained by the board of education includes.

Transportation  
to high school.

**HISTORY.**—R. S. § 4029-3; 89 v. 123, § 3; 95 v. 72; 95 v. 218; 100 v. 74; 104 v. 125 (126).

Except in a centralized school district (7749 G. C.) the transportation of an elementary pupil to school by a board of education is optional (7731 G. C.) unless such pupil has been assigned to a school "without the district" distant more than two miles from the residence of the child (7764 G. C.). (The above paragraph should be read in connection with the paragraph following.—Ed.)

Where a local board of education decides in its discretion that the transportation of an elementary pupil residing more than two miles from a school within the district is "unnecessary", such judgment of the local board must be confirmed by the county board of education, or the probate court, as the case may be; and if not so confirmed the transportation of an elementary pupil resident more than two miles from school is mandatory. (7731 G. C.).

The transportation of elementary pupils residing two miles or less from school is optional with a board of education (7731) except in a centralized school district (7749 G. C.).

The transportation of a pupil eligible to high school by a board of education is optional (7731 G. C.) unless (a) the pupil resides in a district as described in 7749 G. C., or (b) has been assigned to a high school "without the district" and distant more than four miles from the residence of the pupil, (7764 G. C.).

Every board of education *must* provide "work in high school branches" at some school within four miles of the residence of any pupil eligible to high school (7764-1 G. C.); but if the local board rather than furnish such work in its local district desire (a) to provide transportation to any recognized high school, or (b) pay for transportation under 7731-4 G. C. instead of directly providing it, or (c) pay for the pupil's room and board, or part of same, in an amount less than it would cost as provided in 7749-2 G. C., the local board has the privilege or option of thus furnishing "high school work". Op. Atty. Gen. No. 2949, Mar. 28, 1922.

See Opinions of Attorney General as follows:

(1914), p. 1004, cited under Sec. 7748.

(1917), p. 1790, cited under Sec. 7748.

No. 2693, (1921), cited under Sec. 7764-1.

Board may provide transportation to high school in another district.

SECTION 7749-1. The board of education of any village or wholly centralized rural school district may provide transportation to a high school in another district if none is maintained in the given district, or to a high school in another district of higher grade than the one maintained in the given district, for such children resident of the district as are entitled to have their tuition in high school paid by the given board of education.

HISTORY.—109 v. 290.

Under the provisions of House Bill 216, effective August 16, 1921, the board of education of any village or wholly centralized village school district is authorized to provide transportation to a high school in another district, if none is maintained in a given district, or to a high school in another district of a higher grade than the one maintained in a given district, for those pupils who are entitled to have their tuition in high schools paid by the board of education of the district in which the pupils reside, but such board of education is not compelled to provide such transportation.

A board of education may designate the high school to be attended in another school district where it makes a tuition contract with another board of education under the provisions of sections 7734 or 7750 of the General Code, but if no tuition agreement is entered into with another board of education, the high school to be attended can be selected by the pupil holding the diploma. Op. Atty. Gen. No. 2360, Aug. 24, 1921.

When board may furnish the cost of child's room and board.

SECTION 7749-2. A board of education in a district which does not maintain a high school and which pays the tuition of a child resident of the district in a high school in another district, or a board of education which pays the tuition of a child resident of the district in a high school in another district of higher grade than that maintained in the given district may furnish the cost of such child's room and board while attending such school or a part of such cost, provided such amount is less than the cost of transportation of such child and provided such action is approved by the county board of education.

HISTORY.—109 v. 290.

See Opinions of Attorney General, No. 2949 (1922), cited under Sec. 7749.

Agreement, effect of, as to tuition.

SECTION 7750. A board of education not having a high school may enter into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils. When such agreement is made the board making it shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement, if the school or schools selected by the board are located in the same civil township, as that of the board making it, or some adjoining township. In case no such agreement is entered into, the school to be attended can be selected by the pupil holding a diploma, if due notice in writing is given to the clerk of the board of education of the name of the school to be attended and the date the attendance is to begin, such

notice to be filed not less than five days previous to the beginning of attendance.

HISTORY.—R. S. § 4029-3; 89 v. 123, § 3; 95 v. 72, § 4029-3; 95 v. 218; 100 v. 74.

A board of education cannot recover tuition for high school pupils from the district of the residence of such pupils, unless *written notice* is given as provided by section 7750. Op. Atty. Gen. (1917), p. 1455.

The board of education of a school district, which does not maintain a high school and which has not entered into an agreement with any other board or boards of education for the furnishing of high school facilities to the pupils residing in said district, and entitled to high school facilities, cannot be charged with the payment of the tuition of such pupils unless the notice in writing required by the provision of section 7750 G. C., be filed with the clerk of said board of education not less than five days previous to the beginning of the high school attendance of such pupils, setting forth the name of the school to be attended and the date the attendance is to begin. Op. Atty. Gen. (1915), p. 1381.

See Opinions of Attorney General as follows:

(1915), p. 1558, cited under Sec. 7734.

(1917), p. 918, cited under Sec. 7748.

(1914), p. 1004, cited under Sec. 7748.

(1917), p. 1790, cited under Sec. 7748.

(1917), p. 2286, cited under Sec. 7748.

No. 2360, (1921), cited under Sec. 7749-1.

SECTION 7751. Such tuition shall be paid from either the tuition or contingent funds and when the board of education deems it necessary it may levy a tax for such purpose. The proceeds of such levy shall be kept in a separate fund and applied only to the payment of such tuition.

How such  
tuition shall  
be paid.

HISTORY.—R. S. § 4029-3; 89 v. 123, § 3; 95 v. 72; 95 v. 218; 100 v. 74; 108 v. Pt. II 1303 (1311). For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313) § 3.

A board of education not maintaining a high school must pay the tuition of high school pupils resident in such district.

Such tuition can be paid from the tuition or the contingent fund and if either or both are insufficient, a tax levy can be made as provided in section 7751 General Code but limited by section 7649-2 General Code.

Where a district board neglects to pay its proper obligations the county board of education upon investigation shall make such payments as necessary, same to be a charge against the district board. Op. Atty. Gen. (1919), p. 547.

See Opinions of Attorney General as follows:

(1914), p. 1004, cited under Sec. 7748.

(1917), p. 1790, cited under Sec. 7748.

SECTION 7752. No board of education shall be entitled to collect tuition under this chapter unless it is maintaining a regularly organized high school with a course of study extending over not less than two years and consisting mainly of branches higher than those in which the pupil is examined. The standing or grade of all public high schools in the state shall be determined by the superintendent of public instruction and his finding in reference thereto shall be final.

What shall  
constitute a  
high school.

HISTORY.—R. S. § 4029-4; 95 v. 73; 95 v. 218; 100 v. 92; 104 v. 225 (231).

Under section 7761 General Code the State Superintendent of Public Instruction has full authority to prescribe standard requirements as to the methods of instruction in those schools



which receive state aid for the instruction of the blind, and can direct that boards of education maintaining such schools for persons of defective vision shall provide such equipment as is necessary, including text-books printed in large type for the use of pupils who are partially blind.

Boards of education maintaining classes for the blind in order to receive the state aid mentioned in section 7757 General Code must comply with the requirements promulgated by the Superintendent of Public Instruction made under the authority of section 7761 General Code. *Op. Atty. Gen. (1919), p. 1092.*

Appointment  
of high school  
inspectors.

SECTION 7753. The superintendent of public instruction shall appoint two competent public high school inspectors, who are connected with no college or university, two public high school inspectors selected from the faculty staff of the college of education of Ohio State University, and one public high school inspector from each of the faculties of the Ohio normal colleges at Oxford and Athens and the Ohio normal schools at Kent and Bowling Green. The inspectors appointed by the superintendent of public instruction from the faculty staffs of the college of education, normal colleges and normal schools shall be nominated by the presidents of their respective institutions. The superintendent of public instruction may also appoint when necessary, competent instructors from any public or private school to inspect such high schools as the superintendent may direct.

(Appropriations not having been made under this section for the school years 1921-22 and 1922-23 it has become inoperative. Appropriations were made for "two high school supervisors."—Ed.)

HISTORY.—R. S. § 4029-4a; 100 v. 92; 102 v. 47; 104 v. 173.

Duties of  
high school  
inspectors.

SECTION 7753-1. The two public high school inspectors connected with no college or university shall give their entire time to the examination and inspection of public high schools in the state. The inspectors chosen from the faculty staffs shall devote a part of their time, not more than half, to public high school inspection. The superintendent of public instruction shall require all part time inspectors to inspect schools the first half of the year beginning August 1, or the last half of the year beginning February 1, or such other times as may be agreed by the superintendent of public instruction and the president of the institution nominating such inspector. The public high school inspectors shall confer with various authorities and assist the superintendent of public instruction in the classification of schools and in such other ways as he may direct.

HISTORY.—104 v. 173 (174).

Meeting for  
conference  
and direction;  
classification.

SECTION 7753-2. All public high school inspectors shall meet in Columbus at the call of the superintendent of public instruction for the purpose of conference and direction. They shall recommend to the superintendent of public instruction standards and official ratings for all the public high schools of the state, and the decision of the superintendent of public instruction as to the classification of such

schools shall be final, but no public high school shall be recommended for rating except on a majority vote of the inspectors at a meeting called by the superintendent of public instruction who shall be ex-officio chairman of their meetings.

HISTORY.—104 v. 173 (174).

SECTION 7753-3. The high school inspectors giving full time shall be paid an annual salary, the amount of which shall be fixed by the superintendent of public instruction with the approval of the governor, and shall each receive his actual and necessary traveling expenses not to exceed eight hundred dollars per year. The half time inspectors shall receive a compensation, the amount of which shall be fixed by the superintendent of public instruction, and shall also receive their necessary and actual traveling expenses not to exceed four hundred dollars each, for each half year. Both compensation and expenses shall be paid upon vouchers signed by the superintendent of public instruction.

Compensation  
and expenses.

HISTORY.—104 v. 173 (174).

SECTION 7754. All public high school inspectors appointed by the superintendent of public instruction shall furnish reports of all inspection of public high schools made by them. The reports shall be in such form as the superintendent of public instruction may prescribe. Eight copies of the report of each inspection shall be made. Two copies shall be placed on file in the office of the superintendent of public instruction, one copy furnished to each of the institutions from which the half time inspectors are chosen, and one copy furnished to the school inspected.

Reports of  
inspection.

HISTORY.—R. S. § 4029-4b; 100 v. 92; 104 v. 173 (174).

SECTION 7755. The superintendent of public instruction may grant permission to any city, village or rural board of education, upon its application, to establish and maintain a class or classes for the instruction of deaf or blind persons over the age of three, or of crippled persons over the age of five.

Instruction of  
deaf, blind  
and crippled.

The superintendent of public instruction may grant permission to any board of education which maintains a class for the instruction of blind persons, upon its application, to pay for the board of any blind persons, residents of this state, under the age of forty-five, provided that by so doing the board of education is enabled to further its educational plan for blind persons, and provided that such blind persons are not boarded in the homes of their parents or legal guardians, and further provided that such blind persons are under the training of a person or persons designated by such board of education to give such training. At no time shall the number of blind persons residents of the school district in which such class or classes for the blind are maintained who are so boarded at the expense of the board of education exceed one-fourth of the total enroll-

ment for the year of such class or classes except by permission of the superintendent of public instruction.

HISTORY.—R. S. § 4013-1; 98 v. 219, § 1; 103 v. 270 (271); 107 v. 153; 108 v. Pt. II 1280; 109 v. 257.

Payment of  
board by  
board of edu-  
cation, when.

SECTION 7755-1. The superintendent of public instruction may grant permission to any board of education which maintains a class for the instruction of crippled persons, upon its application, to pay for the board of any crippled persons, residents of the state and non-residents of the school district, who are being educated in such class, provided that such persons in the judgment of the board of education and the superintendent of public instruction cannot be transported from their respective homes to and from such class.

HISTORY.—109 v. 257.

Payment when  
child resident  
of one district  
attends in an-  
other.

SECTION 7755-2. If a child resident of one school district attends a class for the blind, deaf, crippled or those of defective mentality in another, the board of education of the district in which he resides may pay his tuition in a sum equal to the tuition in the district in which such class is located for a child of normal needs of the same school grade. The board of education of the district in which such child resides may afford or pay for his transportation to the class in the other district; and the board of education of the district in which the class which he attends is located may provide his transportation to the class. Upon direction of the superintendent of public instruction the board of education of the district in which such child resides shall pay for his transportation and tuition.

HISTORY.—109 v. 257.

It is the mandatory duty of the board of education of the district in which a crippled child resides to provide for his transportation to the school to which he has been or should be assigned, either within or without the district, if the child is so crippled that he is unable to walk to school. Op. Atty. Gen. No. 3226, June 16, 1922.

Transportation  
of crippled  
child.

SECTION 7755-3. In case a child is so crippled that he is unable to walk to the school to which he is assigned the board of education of the district in which he resides shall provide for his transportation to such school. This section shall apply whether there is a special class for crippled children to which he is assigned or not. In case of dispute whether the child is able to walk to the school or not, the district health commissioner shall be judge of such ability.

HISTORY.—109 v. 258.

Children in-  
structed in the  
home, how  
counted.

SECTION 7755-4. In case there are in any school district crippled children not able even with the help of transportation to be assembled in a school and instruction for these children is provided in the home, these children shall be counted under the provisions of section 7757, General Code, counting however three hours of instruction of such children by a teacher provided by the board of education



as equal to the attendance of one child for two days at school.

HISTORY.—109 v. 258.

SECTION 7755-5. If a child is handicapped by two of the defects mentioned in section 7755, General Code, the superintendent of public instruction may allow him to be counted as a full-time pupil among those with each kind of defect in determining the state's contribution to the classes for such children, provided the types of work and attention necessary for both types of children are afforded him.

Who may be counted as full time pupils.

HISTORY.—109 v. 258.

SECTION 7756. Upon petition of the parents or guardians of crippled children in any school district of the respective ages named in section 7755, General Code, the board of education of the given district shall apply to the superintendent of public instruction for permission to establish a special class for such children, and if such is granted shall establish such class not later than the beginning of the following school year upon the standards prescribed under section 7761, General Code; if a board of education fails to perform its duty under this section, the provisions of section 7610, General Code, shall apply as to the acts relating to such special class.

How special class may be established.

HISTORY.—R. S. § 4013-2; 98 v. 219, § 2; 103 v. 270 (271); 107 v. 226 (232); 107 v. 153; 109 v. 258.

SECTION 7757. At the close of each school year the board of education of each school district in which any such classes for the education of the deaf, blind or crippled are maintained shall certify to the auditor of state the names and residences of the persons instructed in such special classes and the period of time each was instructed and the names and residences of the persons boarded at the expense of the board of education and the period of time each was boarded; and the amount expended for special appliances and for the excess of current operating cost of the education of such pupils above the current operating cost of the education of an equal number of pupils of normal needs of the same school grades in the district for the same period of time; and thereupon the auditor of state shall draw his warrant upon the treasurer of state in favor of such board of education in an amount equal to that expended for the aforesaid purposes, but not to exceed three hundred dollars for each deaf or crippled pupil given instruction in such classes within said district for nine months during the said school year, and a proportionate amount for each deaf or crippled pupil given instruction therein for a part of said school year more or less than nine months, and not to exceed three hundred and seventy-five dollars for each blind person given instruction in such classes within said district for nine months during said school year, and a proportionate amount for each blind person given instruction therein for a part of said school

How expenses of schools defrayed.

year more or less than nine months, and two hundred and fifty dollars additional for each blind or crippled person boarded at the expense of such board of education for nine months during said school year and a proportionate amount for each blind or crippled person so boarded for a part of said school year more or less than nine months.

Current operating cost under the terms of this section shall be exclusive of any charges for rental and maintenance or operation of buildings. No charge shall be made against such schools for the deaf, crippled or blind for expenditures other than transportation which would have been incurred had such special classes not been in operation. The superintendent of public instruction shall be the final authority in deciding all questions relative to what constitutes special appliances and current operating cost under the terms of this section.

HISTORY.—R. S. § 4013-3; 98 v. 219, § 3; 103 v. 270 (271); 107 v. 153; 108 v. Pt. II 1280; 109 v. 258.

Payment of  
expenses.

SECTION 7758. The sums provided in the next preceding section shall be paid by such state treasurer upon the presentation of such warrant or order upon satisfactory proof made to him by the president or clerk of the board of education maintaining such school, of the number of persons boarded or instructed therein, their residence, and the period of time such persons were so boarded or instructed in such school or schools the preceding school year, and of the amount expended for special appliances and for the excess of current operating cost of the education of such pupils above the current operating cost of the education of an equal number of pupils of normal needs of the same school grades in the same school district for the same period of time during said school year, and upon certification by the state superintendent of public instruction that the inspection provided for in section 7761 had shown these schools to be operating under satisfactory conditions.

HISTORY.—R. S. § 4013-4; 98 v. 218, § 4; 103 v. 270 (271); 107 v. 154; 108 v. Pt. II 1280 (1281).

Appointment  
and qualifica-  
tion of  
teachers.

SECTION 7759. Teachers in such schools shall be appointed as are other public school teachers. They shall possess the usual qualifications required of teachers in the public schools, and in addition thereto such special training and equipment as the state superintendent of public instruction or the board of education may require. The so-called oral system shall be taught by such teachers in such schools for the deaf. If, after a fair trial of nine months, any of such children in any school for the deaf for any reason are unable to learn such method, then they may be taught the manual method in a separate school, providing however that there are not fewer pupils than provided in section 7755 of the General Code.

HISTORY.—R. S. § 4013-5; 98 v. 219, § 5; 103 v. 270 (271) 107 v. 154.

SECTION 7760. Any person of sound mind who, by reason of defective hearing, or vision or by reason of being so crippled as to be physically unable to properly care for himself without assistance, cannot properly be educated in the public schools as other children shall be considered deaf, blind or crippled within the meaning of sections 7755 and 7757, General Code.

Who considered deaf, blind or crippled.

HISTORY.—R. S. § 4013-6; 98 v. 220, § 6; 103 v. 270 (272); 107 v. 154; 109 v. 259.

SECTION 7761. The superintendent of public instruction shall at the close of each school year require from each board of education of a school district, conducting such schools for deaf, blind and crippled persons a financial statement showing expenditures during the preceding school year for special appliances and for the excess of current operating cost of such pupils above the current operating cost of the education of an equal number of pupils of normal needs of the same school grades in the same school district for the same period of time during said school year.

Annual statement of expenditures to superintendent.

The superintendent of public instruction shall select some competent person or persons to inspect all classes established under section 7755, General Code, at least once a year, and to report concerning the instruction in such classes, the conditions under which they are maintained and the conditions under which such blind and crippled persons are boarded.

Inspection of classes at least once a year.

The superintendent of public instruction shall prescribe standard requirements for day schools for the deaf, blind, and crippled, which receive state aid, which requirements shall include the conditions under which such schools are conducted, the methods of instruction and supervision, the qualifications of teachers and the conditions and terms under which they are employed, the special equipment and agencies for instruction provided, and the conditions of the rooms and buildings in which the schools are held, and he shall prescribe conditions under which blind and crippled persons may be boarded at the expense of a board of education.

Requirements prescribed by superintendent.

HISTORY.—R. S. § 4013-7; 98 v. 220, § 7; 103 v. 270 (272); 104 v. 225 (232); 107 v. 154; 108 v. Pt. II 1280 (1281); 109 v. 259.

SECTION 7761-I. The superintendent of public instruction shall have authority to arrange a plan of co-operation among boards of education which maintain special classes for the blind, for investigation into broader opportunities for the future employment of the pupils and better methods for their instruction. The cost of such investigation shall be charged to the current operating cost of the school for the blind. The superintendent of public instruction shall prescribe minimum standard requirements concerning the extent of such co-operation and the general methods of such investigation.

Co-operation among boards maintaining special classes.

HISTORY.—109 v. 260.



Americaniza-  
tion school;  
when board  
of education  
may establish;  
tuition.

SECTION 7761-2. On the application of not less than fifteen adult persons born outside of the territorial limits of the United States of America, including Alaska and the Hawaiian Islands, resident in the district, the board of education of such school district may establish and conduct an Americanization school open to all persons twenty-one years of age and over, of such foreign birth, resident of the district or of an adjoining district. The board of education of such school district may or may not charge such pupils a fee as in its discretion it may determine. The curriculum for such school shall be such as may be prescribed by the supervisor of Americanization. Such school may be conducted in any school building owned or controlled by such board of education, or in any room or quarters rented for such purpose by the board of education, or the use of which is secured rent free by such board of education. Such room or quarters may be located outside the boundaries of the district. The board of education of any other school district which does not maintain an Americanization school the residents of which are entitled to attend the Americanization school provided for in this section shall pay tuition for such persons, subject to all the provisions of sections seven thousand seven hundred and thirty-five and seven thousand seven hundred and thirty-six of the General Code, excepting that the amount of such tuition shall be ascertained and computed in accordance with the expense of conducting such Americanization school only.

HISTORY.—109 v. 102, P. & A. Code, § 7761-2, which was 102 v. 38, § 2; 104 v. 168, was repealed in 106 v. 111 (112), § 2.

Visitation and  
inspection of  
school; formu-  
lation of  
Americaniza-  
tion programs.

SECTION 7761-3. The department of public instruction shall cause to be visited and inspected all schools engaged in adult immigrant education and assist local boards of education in localities where there is need for the organization of classes for such adult immigrant education, to the end that they may be established and supported. It shall formulate and promote programs for Americanization and patriotic education, co-operate with the agencies of the federal government in the promotion thereof, aid in the correlation of aims and work carried on by public agencies and private individuals and organizations, and study plans and methods which may be proposed or are in use in such work. Such department shall employ such methods, subject to existing laws, as will tend to bring into sympathetic and mutually helpful relations the state and its residents of foreign origin, to protect immigrants from exploitation and abuse, to stimulate their acquisition and mastery of the English language, to develop their understanding of American government, institutions and ideals, and in general, to promote their assimilation and naturalization. Such department may for such purposes cooperate with other offices, boards, bureaus, commissions and departments of the state, and with all public agencies, federal, state, municipal and school.

HISTORY.—109 v. 101, P. & A. Code, § 7761-3, which was 102 v. 38, § 3; 104 v. 168 was repealed in 106 v. 111 (112), § 2.

SECTION 7761-4. A supervisor of Americanization work in the department of public instruction shall be appointed by the governor, who shall discharge the duties and exercise the powers imposed upon and vested in such department by this act. The supervisor shall select an advisory committee to counsel with him in carrying out the provisions of this act. The members of such advisory committee shall receive no compensation, but shall be paid their actual and necessary traveling expenses incurred in connection with their service as such members. The supervisor shall have power to determine the number of assistants and other employes necessary to carry on the work provided for in this act, all of whom shall be in the unclassified service of the civil service of the state. The compensation of the supervisor of Americanization work shall be fixed biennially by the General Assembly and his term of office shall be for two years, commencing on the second Monday of July.

Supervisor;  
appointment  
of; powers  
duties.

HISTORY.—109 v. 102, P. & A. Code § 7761-4, which was 102 v. 38, § 3; 104 v. 168 was repealed in 106 v. 111 (112), § 2.

# CHAPTER 20

## COMPULSORY EDUCATION

### SECTION

- 7762. Branches in which children are required to be instructed.
- 7762-1. Branches in elementary schools shall be taught in English only.
- 7762-2. Pupils in private, parochial, etc., schools to be taught in English only.
- 7762-3. Penalty for violation of act.
- 7762-4. Construction of act with respect to constitutionality.
- 7762-5. Children employed on Age and Schooling Certificates to attend part time school.
- 7762-6. Children of compulsory school age to attend public, private or parochial school.
- 7763. Children of compulsory school age to attend school for not less than thirty-two weeks per year.
- 7763-1. Children attending school other than public schools required to receive equivalent of public school instruction.
- 7763-2. Registration of child at or about beginning of school year shall be registration for school year.
- 7763-3. Definition of term superintendent of schools as used in act.
- 7763-4. Appeal from decision of superintendent of schools refusing to excuse from attendance or refusing to grant Age and Schooling Certificate.
- 7763-5. Provision with respect to blind, deaf, crippled or mentally defective children.
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- 7764-1. High School work to be provided for child finishing grade school work.
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- 7765. Minors of compulsory school age not to be employed without Age and Schooling Certificate.
- 7765-1. Parent or Guardian to secure and keep proper Age and Schooling Certificate of child if employed.
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- 7766-7. School record of child to be furnished by superintendent, principal, etc., within two days after request for same.
- 7766-8. Conditional Age and Schooling Certificate to be issued to child, when; facts to be furnished to superintendent.

### SECTION

- 7766-9. Issue of special Age and Schooling Certificate permitting employment during hours when school is not in session.
- 7767. Part time school work required of child to whom Age and Schooling Certificate issued.
- 7767-1. Part time school work permitted in school other than public school, when.
- 7767-2. Superintendent of schools to be judge of availability of school in applying preceding sections.
- 7769. Appointment of Attendance officer.
- 7769-1. Employment of Attendance officer by county board of education.
- 7769-2. Duties of Attendance officer or assistant.
- 7770. Powers conferred on Attendance officer and assistants.
- 7770-1. Issue of over-age certificate on application of minor over eighteen years old.
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- 6250. Inspector or visitor of Industrial Commission invested with authority of Attendance officer.
- 7772. Principal of public, private or parochial school to make reports to clerk of board of education of pupils under eighteen.
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- 10964. Who may unite in application.
- 10965. Hearing and orders thereon.



SECTION 7762. All parents, guardians or other persons who have the care of children who are of compulsory school age as indicated in section 7763, General Code, and who are not employed on age and schooling certificates shall instruct them, or cause them to be instructed, in reading, spelling, writing, the English language, English grammar and composition, geography, arithmetic, United States history, American government and citizenship, and hygiene, or in such of those branches or in such other branches as are suited to the age, employment and advancement of the particular children and are included in the subjects taught in the schools of the state.

Branches in which children shall be instructed.

HISTORY.—R. S. § 4022-1; 86 v. 333; § 1; 87 v. 143; 87 v. 316; 89 v. 389; 90 v. 285; 95 v. 615; 108 v. Pt. I 542; 109 v. 377.

The following brief synopsis of the Bing Act (H. B. 111) passed April 29, 1921, is given in Opinion of Attorney General No. 2949, March 28, 1922:—

The ages for compulsory school attendance are 6 to 18 years, but a local board of education may by resolution change this to 7 to 18 years. A child who is 6 years of age (or 7 in case the board sets the age at 7), after the beginning of a semester, may not be required to attend until the beginning of the following semester. See Section 7763 (end) and Section 7681. A child may be released from school on an age and schooling certificate after reaching the age of 16 unless he has failed to complete the seventh grade by that age. It is only during employment, however, that the child is excused from school (Sec. 7766), but a graduate of a first grade high school need not attend school further (Sec. 7764-2). Children whose bodily condition does not enable them to attend school may be excused by the superintendent, but the disability must be fully proved and when able the child must enter or return to school. A child can be excused on the ground of physical or mental disability only by the superintendent of the public schools (or person designated by him). (See Sec. 7763.) However, all children who are blind, deaf or crippled, or who are of defective mentality, should be sent to schools suited to them. (See Sec. 7763-5.) Children may be assigned by the juvenile court to suitable institutions. (See Sec. 7780 and Sec. 7781.) In case a child is supposed to be of seriously defective mentality, the services of the State Bureau of Juvenile Research should be asked that advice as to his education and care may be secured. Children need not be admitted at five, though the school census includes children from 5 to 18 years of age. (Sec. 7794.) This contemplates kindergartens for those five years of age. However, the schools are required by law to be free only to those from 6 to 21 years of age (Sec. 7681). Children must attend the entire year, for the law provides that a child must enter within the first week of the school term or within one week from the date of his moving to the district. The attendance must be for the full time the school attended is in session. (Sec. 7763, first paragraph.) A child actually resident in the state must attend school whether his parents are residents or not. (Sec. 7775 and Sec. 7778.) The board of education may aid an indigent child (Sec. 7777), the intent being that no child should be deprived of education because of poverty.

The obligation that a child shall attend school rests primarily on the parents of the child and prosecution for failure of a child to attend school is primarily instituted against the parents (Sections 7762, 7763—first paragraph—and 7773), but if a child, contrary to the directions of his parents, fails to attend school, he may be prosecuted as a delinquent child (Sec. 7762-6 and 7774). The child shall attend the school and grade to which he is assigned by the superintendent of schools, or if he attends a parochial school, the grade to which he is assigned by the principal thereof. In any case the grade or class must be suited to his age and state

of advancement. (Sec. 7762 and Sec. 7764.) The completion of the grades does not excuse a child from further school attendance for he may be assigned by the superintendent to further study in the elementary school or to a high school.

If there is no high school in a given rural district, the child may be assigned to a high school within four miles in another district, and the board of education must pay his tuition. The same is true if the high school is in another district and more than four miles distant from his residence, except that the child may not be required to attend the high school in that case unless his transportation or board in lieu thereof is provided. See Sec. 7764, Sec. 7749-1 and Sec. 7749-2. If high school training is not thus provided any child, the board in his district must provide work in high school branches in connection with some elementary school, or otherwise, within four miles of the child's residence (Sec. 7764-1).

See Opinions of Attorney General as follows:

No. 2495, (1921), cited under Sec. 7681.

(1919), p. 1043, cited under Sec. 7762-1.

Branches in elementary schools shall be taught in English only.

SECTION 7762-1. That all subjects and branches taught in the elementary schools of the state of Ohio below the eighth grade shall be taught in the English language only. The board of education, trustees, directors and such other officers as may be in control, shall cause to be taught in the elementary schools all the branches named in section 7648 of the General Code. Provided, that the German language shall not be taught below the eighth grade in any of the elementary schools of this state.

HISTORY.—108 v. Pt. I 614.

No principle is better established by the decisions of the federal and state courts than that the possession and enjoyment of all rights are subject to such reasonable regulations as are deemed by the legislative authority to be essential to the welfare of the state, and every intendment is to be made in favor of the validity and lawfulness of such regulations unless they are clearly unreasonable and violative of some express provision of the constitution.

For these reasons we are unable to reach the conclusion that Sections 7762-1 and 7762-2 are unconstitutional, and the judgment of the court of appeals will, therefore, be affirmed. *Pohl v. State*, 102 O. S. 474. (June 7, 1921.)

This section and Sections 7762-2 and 7762-3, General Code, were held to be constitutional in the case of *Pohl vs. State*, 102 O. S., p. —

Citizens can conduct strictly religious German catechism schools for the study of the Bible and church history and such instruction is not a violation of amended senate bill No. 137. *Op. Atty. Gen.* (1919), p. 1043. (Sections 7762-1, 7762-2, 7762-3 and 7762-4 of the General Code.)

Sections 7762-1 and 7762-2, G. C., which became effective in September, 1919, contain no provisions which prohibit catechetical instruction in the German language in the Sunday Schools conducted by religious denominations.

A summer school which is held when another term of school is not in session is governed by the same law which governs the regular term or session of the school.

The German language shall not be taught below the eighth grade in any of the elementary schools, private or parochial schools, or schools maintained in connection with benevolent or correctional institutions in this state. *Op. Atty. Gen.* (1919), p. 676.

SECTION 7762-2. All private and parochial schools and all schools maintained in connection with benevolent and correctional institutions within this state which instruct pupils who have not completed a course of study equivalent to that prescribed for the first seven grades of the elementary schools of this state, shall be taught in the English language only, and the person or persons, trustees or officers in control shall cause to be taught in them such branches of learning as prescribed in section 7648 of the General Code or such as the advancement of pupils may require, and the persons or officers in control direct; provided that the German language shall not be taught below the eight grade in any such schools within this state.

Pupils in private and parochial schools, etc., shall be taught in English only.

HISTORY.—108 v. Pt. I 614.

See Opinions of Attorney General (1919), p. 1043, cited under Sec. 7762-1.

SECTION 7762-3. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and each separate day in which such act shall be violated shall constitute a separate offense.

Penalty for violations of law.

HISTORY.—108 v. Pt. I 614 (615).

See Opinions of Attorney General (1919), p. 1043, cited under Sec. 7762-1.

SECTION 7762-4. In case any section or sections of this act [G. C. §§ 7762-1 to 7762-4], shall be held to be unconstitutional by the supreme court of Ohio such decision shall not affect the validity of the remaining sections.

Section held unconstitutional shall not affect others.

HISTORY.—108 v. Pt. I 614 (615).

See Opinions of Attorney General (1919), p. 1043, cited under Sec. 7762-1.

SECTION 7762-5. All parents, guardians and other persons who have the care of children who are employed on age and schooling certificates shall cause them to attend a part-time day school or class for the full time that the school or class is in session whenever such part-time school or class shall have been established and is accessible to the child in the district where the child resides or is employed, unless the superintendent of schools determines that a given child has already completed the same work as or work equivalent to that taken up in such part-time schools or classes as may be available for the child to attend or that the bodily or mental condition of the child does not permit of his attendance at such school or class.

Children employed on age and schooling certificate shall attend a part-time day school or class.

Such attendance shall begin within the first week of the school term or within one week after an age and schooling certificate is issued to a child.

If a child resides in one school district and is employed in another he shall be under the jurisdiction of the district in which he is employed for the purpose of this section and section 7767, General Code, unless by written

Jurisdiction when child employed in one district resides in another.



excuse the superintendent of schools releases him to the jurisdiction of the district in which he resides.

HISTORY.—109 v. 377.

Who shall  
attend school.

SECTION 7762-6. Every child of compulsory school age who is not employed on an age and schooling certificate shall attend a public, private or parochial school under the conditions prescribed in sections 7763, 7763-1, 7764 and 7764-1, General Code.

HISTORY.—109 v. 378.

School attendance;  
when child  
may be excused;  
home teaching  
requirements;  
compulsory  
school age  
defined.

SECTION 7763. Every parent, guardian or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or within one week of the date at which the child begins to reside in the district or within one week after his withdrawal from employment.

But the child may be excused from attendance at school for the current school year upon satisfactory showing that the bodily or mental condition of the child does not permit of its attendance at school or that the child is being instructed at home by a person qualified to teach the branches specifically enumerated in section 7762, General Code, and if the stage of advancement of the child demands it, qualified to teach such additional branches as his needs may require. The qualifications of the person purposing to teach such child at home shall be determined by the superintendent of schools. Excuses from school attendance under this section or section 7762-5, General Code, shall be given only by the superintendent of schools having jurisdiction in the district in which the child is living. Such excuse shall be in writing; a copy shall be given to the person in charge of the child; such excuse shall show the reason for excusing the child, and there shall be filed in the office of the superintendent issuing same, with a copy of the excuse, papers showing how the inability of the child to attend school or the qualifications of the person instructing the child at home were determined. Should it be found later within the school year that the disability of the child has been removed or that the child is not being properly instructed, as the case may be, it becomes the duty of the person who issues the excuse or of his successor to recall the same; or notwithstanding his neglect to do so the child and the persons in charge of the child may be proceeded against after due notice the same as if the excuse were no longer current.

Compulsory school age shall mean six to eighteen years of age, except that the board of education of any city, village or rural school district may at its discretion provide that in the given school district compulsory school

age shall mean seven to eighteen years of age, such action being subject to modification to the standard of six to eighteen years of age by subsequent action of the board, and except that the attendance of a child who becomes six or seven years of age, as the case may be according to the standard of compulsory school age in effect in the given district, during a given semester shall not be required until the beginning of the following semester.

HISTORY.—R. S. § 4022-1; 86 v. 333; § 1; 87 v. 143; 87 v. 316; 89 v. 389; 90 v. 285; 95 v. 615; 101 v. 310; 103 v. 864 (898); 104 v. 225 (232); 109 v. 378.

See Opinions of Attorney General as follows:

(1915), p. 627, cited under Sec. 7739.

No. 2949, (1922), cited under Sec. 7749.

SECTION 7763-1. If any child shall so attend upon instruction elsewhere than in a public school such instruction shall be equivalent to the instruction given children of like age and advancement in the public schools of the district in which such child resides; and the hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district. But nothing in this section shall be construed to require a child to attend a high school instead of a vocational, commercial or other special type of school, provided the instruction therein is for a term and for hours equivalent to those of the high school, and provided his attendance at such school will not interfere with a continuous program of education for the child to the age of sixteen.

Requirements when child instructed elsewhere than in public school.

HISTORY.—109 v. 379.

SECTION 7763-2. The registration of a child in or about the month of September when regular school sessions begin or at the time thereafter that he begins to reside in the district shall be a registration for the period until the next annual registration, if the child continues to reside in the district. Boards of education may provide or approve, subject to the approval of parents, activities for children during the summer vacation period which will promote their health, their civic and vocational intelligence, their industry, recreation, character or thrift or several of these. The superintendents of schools shall cause records to be kept of such activities assigned and completed. With the approval of the superintendent of public instruction the successful completion of such vacation activities may be required for promotions and diplomas of graduation; but the completion by any child of such vacation activities shall not be prerequisite to the issuance of an age and schooling certificate for such child. Boards of education shall provide the service necessary to direct such activities and may pay any necessary expenses incident thereto, the same as the expense of an ordinary elementary school.

Provisions for health activities during vacation period; record of activities.

HISTORY.—109 v. 379.

The term  
"superin-  
tendent of  
schools" de-  
fined.

SECTION 7763-3. The term superintendent of schools as used in this chapter shall be interpreted to mean, in the respective classes of school districts, the city, exempted village or county superintendent of schools, or person designated by such superintendent; provided that if at any time there is no such superintendent in a given district the president of the board of education shall perform these duties.

HISTORY.—109 v. 379.

Appeal when  
excuse or  
certificate re-  
fused.

SECTION 7763-4. In case such superintendent of schools refuses to excuse a child from attendance at school for one of the reasons stated in section 7763, General Code, or refuses upon request to grant an age and schooling certificate as provided in section 7766, General Code, an appeal may be taken from such decision to the judge of the juvenile court of the county, upon the giving of bond, within ten days thereafter, to the approval of such judge, to pay the costs of appeal. His decision in the matter shall be final.

HISTORY.—109 v. 380.

Valid excuse  
from attend-  
ance required;  
how de-  
termined.

SECTION 7763-5. In the case of a blind, partially blind, deaf or crippled child or a child of defective mentality an excuse granted under section 7763 or 7763-4, General Code, on the ground of bodily or mental condition shall not be a valid excuse from attendance by the child upon a day school for the blind, deaf, crippled or those of defective mentality or from attendance at a state institution for the care and instruction of the blind, deaf, crippled or those of defective mentality unless in the case of a day school there are factors in the child's condition or the means of reaching the school which make attendance at such a special class impracticable. If there is a day school for children handicapped in one of the above respects in the school district, or in another district and transportation to such class by school conveyance or common carrier is provided by a board of education or other agency, the superintendent of schools shall be the judge of the practicability of the child's attendance at such school adapted to the needs of children handicapped in the particular respect.

HISTORY.—109 v. 260.

See Opinions of Attorney General (1922), p. 2949, cited under Sec. 7749.

Assignment  
of pupil to  
classes; when  
transportation  
furnished.

SECTION 7764. The child in his attendance at school shall be subject to assignment by the principal of the private school or superintendent of schools as the case may be, to the class in elementary school, high school or other school, suited to his age and state of advancement and vocational interest, within the school district; or, if the schooling is not available within the district, without the school district, provided the child's tuition is paid and provided further that transportation is furnished in case he lives more than two miles from the school, if elementary, or four miles from the school, if a high school or other school. The



board of education of the district in which the child lives shall have power to furnish such transportation.

HISTORY.—R. S. § 4022-1; 86 v. 333; § 1; 87 v. 143; 87 v. 316; 89 v. 389; 90 v. 285; 95 v. 615; 103 v. 864 (899); 109 v. 380.

Except in a centralized school district (7749 G. C.) the transportation of an elementary pupil to school by a board of education is optional (7731 G. C.) unless such pupil has been assigned to a school "without the district" distant more than two miles from the residence of the child (7764 G. C.).

Where a local board of education decides in its discretion that the transportation of an elementary pupil residing more than two miles from a school within the district is "unnecessary", such judgment of the local board must be confirmed by the county board of education, or the probate court, as the case may be; and if not so confirmed the transportation of an elementary pupil resident more than two miles from school is mandatory (7731 G. C.).

The transportation of elementary pupils residing two miles or less from school is optional with a board of education (7731) except in a centralized school district (7749 G. C.).

The transportation of a pupil eligible to high school by a board of education is optional (7731 G. C.) unless (a) the pupil resides in a district as described in 7749 G. C., or (b) has been assigned to a high school "without the district" and distant more than four miles from the residence of the pupil (7764 G. C.).

Every board of education *must* provide "work in high school branches" at some school within four miles of the residence of any pupil eligible to high school (7764-1 G. C.); but if the local board rather than furnish such work in its local district desired (a) to provide transportation to any recognized high school, or (b) pay for transportation under 7731-4 G. C. instead of directly providing it, or (c) pay for the pupil's room and board, or part of same, in an amount less than it would cost as provided in 7749-2 G. C., the local board has the privilege or option of thus furnishing "high school work". Op. Atty. Gen. No. 2949, Mar. 28, 1922.

Where a pupil attending a joint high school resides more than four miles from such joint high school, the transportation of the pupils to the joint high school should be provided by the board of education of the district in which the child lives (7764).

A school district furnishing transportation to any of its pupils to a joint high school which the district helps to maintain, should report the personal service item of transportation expense incurred, as provided in 7787 and 7600 G. C., and where such personal service item of transportation expense has been reported to the county auditor by the district which has made the transportation expense, such expenditure in a joint high school district should not be reported to the county auditor a second time, under the provisions of section 7671-1 G. C.

Under existing law there is no authority for boards of education in charge of districts constituting a joint high school district to provide for the joint expense of transportation costs to such high school, nor is there authority for the high school committee in charge of the management of such high school to provide transportation of high school pupils to such high school. Op. Atty. Gen. No. 3114, May 18, 1922.

SECTION 7764-1. Boards of education shall provide work in high school branches, as mentioned in section 7648, General Code, at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum except those who live within four miles

Work in high school branches shall be provided within four miles.

of a high school and those for whom transportation to a high school has been provided.

HISTORY.—109 v. 380.

In lieu of providing work in high school branches, as required of boards of education, under the provisions of section 7764-1 G. C., a board of education may transport to a high school outside the district all pupils of compulsory school age who have finished the ordinary grade school curriculum and who live more than four miles from any high school.

A board of education maintaining a second grade or a third grade high school is satisfying the requirements of section 7764-1 G. C. by providing work in high school branches for those pupils who have not graduated from such second or third grade high school.

The transportation of high school pupils by a board of education is optional (7731) except as to those mentioned in section 7749 G. C. and a board of education is not compelled to transport graduates of a second or third grade high school to a high school of higher grade, unless it has assigned such graduates to a higher grade high school outside the district and distant more than four miles from the residence of the pupil. Op. Atty. Gen. No. 2693, Dec. 1, 1921.

See Opinions of Attorney General (1922), p. 2949, cited under Sec. 7749.

When child not compelled to attend school.

SECTION 7764-2. If a child of compulsory school age has been graduated from a high school of the first grade such child shall not be required longer to attend school.

HISTORY.—109 v. 380.

See Opinions of Attorney General (1922), p. 2949, cited under Sec. 7749.

Age and schooling certificate of minor employed; filing of by employer.

SECTION 7765. No minor of compulsory school age shall be employed or be in the employment of any person, company or corporation unless such minor presents to such person, company or corporation the proper age and schooling certificate, or age and preemployment card as a condition of employment. Such employer shall keep the same on file in the establishment where such minor is employed or in the office of the business or in the residence in or about which such minor is employed for inspection by attendance officers, probation officers, the superintendent of schools, or inspectors or other employes of the industrial commission or the board of state charities of Ohio, or representatives of the district board of health or state department of health.

Such certificate or an over age certificate or age and preemployment card shall be conclusive evidence for such employer of the age of such minor and so long as in force of the employer's right to employ such minor and the minor's right to engage in such occupations as are not denied by law to minors of the age and sex stated in such certificate, except that a limited or special certificate is confined to particular employments.

Notice to the school authorities that the child has left the employ of an employer shall render void from that date the age and schooling certificate or age and preemployment

card filed with such employer, insofar as it shall permit the further employment of such child.

HISTORY.—R. S. § 4022-2; 86 v. 334, § 2; 90 v. 285; 95 v. 616; 97 v. 365; 101 v. 310; 103 v. 864 (899); 109 v. 380.

In view of the provisions of Sections 7765 and 7766 G. C., prescribing compulsory education and requiring an age and schooling certificate, an employer cannot excuse himself for thinking a minor, under the prohibited age, old enough to enter his employment unless such certificate is produced; the burden of establishing lawful employment is on the employer. Hence, when it appears that a minor is not employed lawfully, he is not an employe under the workmen's compensation act. *Kutz v. Stamping Co.*, 38 O. C. R. 273.

Where children between the ages of 6 and 15 are employed during the vacation of the public schools in weeding by hand fields planted to vegetables such as onions, such employment constitutes a violation of sections 12976, 7765, 7766-6, 7766-9 and 7770-2 of the General Code, and other sections relating generally to the employment of minors of school age as amended in 1921. It is unlawful to employ a child under 14 years of age at any time except for irregular service not involving confinement nor continuous physical strain, nor more than four hours work in any day or twenty-four hours in any week, such work to be interrupted with rest or recreation periods. The application of various other statutes relating to the employment of minors in industry to such state of facts considered. *Op. Atty. Gen. No. 3248*, June 21, 1922.

See Opinions of Attorney General (1914), p. 1536, cited under Sec. 7777.

SECTION 7765-1. The parent or guardian of a child of compulsory school age shall be required to secure and keep on file the proper age and schooling certificate of his child or ward if such child or ward is employed by him and shall be required to return such certificate as provided in section 7766-1, General Code, but a parent or guardian shall not be required to secure and keep on file a special or vacation certificate of his child or ward that such child or ward may be employed by him personally when school is not in session.

Age and schooling certificate of child kept on file by parent or guardian, when.

HISTORY.—109 v. 381.

SECTION 7765-2. Notwithstanding the provisions of sections 7765 and 12993, General Code, a child may be employed in irregular service not forbidden by sections 13001, 13002 or 13007-3, General Code, without holding an age and schooling certificate.

Employment in irregular service not forbidden.

Irregular service shall be interpreted to mean service not forbidden by federal child labor laws which (a) does not involve confinement, (b) does not require continuous physical strain, (c) is interrupted with rest or recreation periods, and (d) does not require more than four hours of work in any day or twenty-four hours in any week. The health commissioner of the district in which employment is afforded to any child shall determine whether the employment involves confinement or requires continuous physical strain so that it cannot be deemed irregular service within the meaning of this section.

HISTORY.—109 v. 381.



Who may  
issue age and  
schooling cer-  
tificates.

SECTION 7766. An age and schooling certificate may be issued only by the superintendent of schools and only upon satisfactory proof that the child to whom the certificate is issued is over sixteen years of age and has satisfactorily passed a test for the completion of the work of the seventh grade, provided that residents of other states who work in Ohio must qualify as aforesaid with the proper school authority in the school district in which the establishment is located, as a condition of employment or service.

When certi-  
ficates may be  
issued; by  
whom signed.

Any such age and schooling certificate may be issued only upon satisfactory proof that the employment contemplated by the child is not prohibited by any law regulating the employment of such children; and when the employer of any minor for whom such age and schooling certificate shall have been issued shall keep such age and schooling certificate on file as provided by law, the provisions of section 6245-2, General Code, shall not apply to such employer in respect to such child while engaged in an employment legal for a child of the given sex and of the age stated therein.

Age and schooling certificate forms shall be formulated by the superintendent of public instruction, and except in cases otherwise specified by law must be printed on white paper. Every such certificate must be signed in the presence of the officer issuing it by the child in whose name it is issued. Blank certificates shall be furnished by the superintendent of public instruction upon request.

HISTORY.—R. S. § 4022-2; 86 v. 334, § 2; 90 v. 285; 95 v. 616; 97 v. 365; 101 v. 310; 103 v. 864 (899); 104 v. 129; 109 v. 381.

See Opinions of Attorney General (1914), p. 1536, cited under Sec. 7777.

Requirements  
before issuing  
certificate.

SECTION 7766-1. The superintendent of schools shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed:

(1) The written pledge or promise of the person, partnership or corporation to legally employ the child, to permit him to attend school as provided in section 7767, General Code, and to return to the superintendent of schools the age and schooling certificate of the child or give notice of the non-use thereof within two days from the date of the child's withdrawal or dismissal from the service of that person, partnership or corporation, giving the reasons for such withdrawal or dismissal.

(2) The school record of the child, properly filled out and signed by the person in charge of the school which the child last attended; giving the recorded age of the child, his address, standing in studies, rating in conduct, and attendance in days during the school year of his last attendance, and if that was not a full year, during the preceding school year.

(3) Evidence of the age of the child as follows:

(a) The birth certificate of the child (or duly attested transcript thereof) issued near the date of the birth of the child by the registrar of vital statistics of Ohio, or

by a similar officer charged with the duty of recording births in another state or country, shall be conclusive evidence of the age of the child.

(b) In the absence of such certificate, a passport (or duly attested transcript thereof) showing the date and place of birth of the child, filed with a register of passports at a port of entry of the United States; or a duly attested transcript of the certificate of birth or baptism or other religious record, showing the date and place of birth of the child, shall be conclusive evidence of the age of the child.

(c) In case no one of the above proofs of age can be produced, other documentary evidence (except the affidavit of the parent, guardian or custodian) satisfactory to the superintendent of schools may be accepted in lieu thereof.

(d) In case no documentary proof of age can be procured, the superintendent may receive and file an application signed by the parent, guardian or custodian of the child that a physician's certificate be secured to establish the sufficiency of the age of the child. Such application shall state the alleged age of the child, the place and date of birth, his present residence, and such further facts as may be of assistance in determining the age of the child, and shall certify that the person signing the application is unable to obtain any of the documentary proofs specified in (a), (b) and (c) above.

If the superintendent of schools is satisfied that a reasonable effort to procure such documentary proof has been without success such application shall be granted and the certificate of the school physician or if there be none, of a physician employed by the board of education, that said physician is satisfied that the child is above the age required for an age and schooling certificate as stated in section 7766, General Code, shall be accepted as sufficient evidence of age.

(4) A certificate from the school physician or physician designated by him, or if there be no school physician from the district health commissioner, or physician designated by him, showing after a thorough examination that the child is physically fit to be employed in such occupations as are not prohibited by law for a boy or girl, as the case may be, under eighteen years of age.

But a certificate with the word limited written, printed or stamped diagonally across its face may be furnished by the school physician or other person indicated in the above sentence, and accepted by the superintendent of schools in issuing a "limited" age and schooling certificate provided in section 7766-3, General Code, showing that the child is physically fit to be employed in some particular occupation not prohibited by law for a boy or girl as the case may be of the child's age which the child contemplates entering even if the child's complete physical ability to en-

gage in any occupation as required in the preceding sentence cannot be vouched for.

HISTORY.—108 v. Pt. I 605; 109 v. 382. Not analogous to § 7761-1 in 108 v. Pt. I 605 but largely separated out from § 7766 of 104 v. 129.

What required  
on reissue.

SECTION 7766-2. When an age and school certificate, returned according to section 7766-1, General Code, is re-issued, the pledge of the new employer and certificate from the school physician or other person in his stead shall be secured and filed.

HISTORY.—109 v. 383.

When the  
word "limited"  
shall be writ-  
ten on face of  
certificate.

SECTION 7766-3. The age and schooling certificate provided in section 7766, General Code, shall be issued only with the word "limited" printed or stamped diagonally across its face if the certificate of the physician provided in section 7766-1 or 7766-2, General Code, is a limited certificate and in that case the particular employment to which it is limited shall be stated in the certificate, and the certificate cannot serve as the legal age and schooling certificate for employment in another occupation. Such limited certificate shall be printed on pink paper.

HISTORY.—109 v. 383.

Examination  
to determine  
whether appli-  
cant has com-  
pleted school  
work.

SECTION 7766-4. In order to ascertain whether applicants for age and schooling certificates have satisfactorily completed the school work prescribed in section 7766, General Code, the board of education of any city school district may appoint a juvenile examiner who shall receive such compensation as may be fixed by the board of education. When such a juvenile examiner is employed no such certificate shall be granted by the superintendent of schools of the district unless the juvenile examiner has certified that he has examined the child and that the child has passed to his satisfaction the grade test as provided by section 7766, General Code, provided, however, that if a child in the opinion of said juvenile examiner is below the normal in mental development so that he cannot with further schooling and due industry pass such test, such fact shall be certified to by said examiner and the superintendent of schools shall grant the child an age and schooling certificate printed on yellow paper with the words "Retarded-Schooling not Standard" written, printed or stamped diagonally across the face; and provided, further, that if the juvenile examiner is satisfied that the standard of any school is sufficiently high, he may accept the records thereof as showing that a child has passed the required test. In case no juvenile examiner is employed the superintendent of schools may proceed and determine in like manner; if after proper tests he determines that a child is below normal in mental development to the extent specified above, he shall grant such a "retarded" age and schooling certificate. If a child who desires an age and schooling certificate is granted a "retarded" certificate but secures only a limited health certificate, the word "limited" shall be written or



stamped across the face of the "retarded" certificate and the limited "retarded" certificate shall be on yellow paper; in which case the certificate shall show to what employment it is limited.

HISTORY.—109 v. 383 (but largely separated out from § 7766 of 104 v. 129).

SECTION 7766-5. A record giving all the facts contained in every age and schooling certificate issued shall be kept on file in the office issuing the same; and also a record of the names and addresses of the children to whom certificates have been refused, together with the names of the schools and grades which such children should attend and the reasons for the refusals; and also a record of all certificates returned or no longer used, as provided in sections 7766-1, (1), 7766-6 or 7766-9, General Code, with the reasons therefor, and the subsequent assignment of the child to a school, if any; and also a record of the conditions on which any certificates were issued, and there shall be kept on file also the pledges given in connection therewith; and also a record of the special facts connected with the issuing of "retarded" or limited certificates. The superintendent of public instruction shall have the power to prescribe methods of filing of all such facts, records and papers, for purposes of effective reference. The above-named record is nevertheless not required in the cases of certificates denied to those determined immediately at the time of inquiry to be of insufficient age.

Record of facts contained in certificate must be kept.

HISTORY.—109 v. 384.

SECTION 7766-6. The superintendent of schools may issue a vacation certificate to a boy or girl under eighteen years of age and over fourteen years of age which shall permit him to be employed within the restrictions of other statutes during the summer school vacation up to August 25th, in occupations not forbidden by sections 13001, 13002 or 13007-3, General Code, to children of his age and sex, regardless of what schooling he has completed, but before such certificate is issued the requirements prescribed in section 7766-1 with relation to health, written pledge of employment, and proof of age must be complied with. Such vacation certificate shall be printed on blue or blue-tinted paper and the word "vacation" shall be printed or stamped across its face; such certificate shall include a statement of the school and grade in which the child is enrolled. Such certificates must be returned to the superintendent of schools by employers within the same period and under the same penalties as regular age and schooling certificates and may be revoked by the superintendent of schools at any time because of the physical condition of the child or other sufficient cause.

Vacation certificates, issue of; how printed.

If a child who desires a vacation age and schooling certificate secures only a limited health certificate the word "limited" shall be written or stamped across the face of the vacation certificate and the limited vacation certificate shall

be on blue or blue-tinted paper; in which case the certificate shall show to what employment it is limited.

HISTORY.—109 v. 384 (but formerly largely included in § 7706 of 104 v. 129).

School record  
of child  
furnished.

SECTION 7766-7. Whenever the school record of a child as specified in section 7766-1, General Code, is required for the purpose of determining his eligibility to an age and schooling certificate, such record shall be furnished by the superintendent, principal, teacher or other official in charge of the public, private or parochial school attended by the child within two days after a request for the same is made by the parent, guardian or custodian of the child.

HISTORY.—109 v. 385.

When and  
upon what  
facts "condi-  
tional— school-  
ing not stand-  
ard" certifi-  
cates may be  
issued.

SECTION 7766-8. Whenever an age and school certificate is applied for by a child over sixteen years of age who is unable to satisfactorily pass a test for the completion of the work of the seventh grade and who is not so below the normal in mental development that he cannot with further schooling and due industry pass such a test, an age and schooling certificate with the words "Conditional—Schooling not Standard" printed or stamped across its face may be issued by the superintendent of schools to such child upon proof acceptable to such superintendent of schools of the following facts and upon agreement to the respective conditions made in writing by the child and by the parent, guardian or custodian in charge of such child:

(A) Facts to be proved:—

Facts to be  
proved.

That the child is addicted to no habit which is likely to detract from his reliability or effectiveness as a worker, or proper use of his earnings or leisure, or the probability of his faithfully carrying out the conditions to which he agrees as specified in (B) below, and in addition any one of the following groups of facts—

(1) That the child has been a resident of the school district for the last two or more years, has diligently attended upon instruction at school for the last two years or more, and is able to read, write and perform the fundamental operations of arithmetic. These abilities shall be judged by the juvenile examiner or if there be none, by the superintendent of schools.

(2) That the child having been a resident of the school district less than two years, diligently attended upon instruction in school in the district or districts in which the child was a resident next preceding his residence in the present district for the last school year preceding his removal to the present district, and has diligently attended upon instruction in the schools of the present school district for the period that he has been a resident thereof.

(3) That the child has removed to the present school district since the beginning of the last annual school session, and that instruction adapted to his needs is not provided in the regular day schools in the school district.

(4) That the child is not sufficiently familiar with the English language to be properly instructed in the full-time day schools of the district.

(5) That the child is needed for the support or care of a parent or parents or for the support or care of brothers or sisters for whom the parents are unable to provide and that the child is desirous of working for the support or care of such parents or siblings and that such child cannot render such needed support or care by a reasonable effort outside of school hours. But no age and schooling certificate shall be granted to a child upon proof of the facts in the preceding sentence without written consent given to the superintendent of schools by the judge of the juvenile court and by the board of state charities.

(B) Conditions to be agreed to: —

(1) In case the certificate is granted under facts (1), (2), (3) or (5) above, that until reaching the age of eighteen years the child will diligently attend in addition to part-time classes, such evening classes as will add to his education for literacy, citizenship or vocational preparation which may be made available to him in the school district and which he may be directed to attend by the superintendent of schools, or in case no such classes are available, that he will pursue such reading and study and report monthly thereon as may be directed by the superintendent of schools.

Conditions to  
be agreed to.

(2) In case the certificate is granted under fact (4) above, that until the age of twenty-one years or until the person is eighteen years of age and has learned to read, write and speak the English language, the said person will attend in addition to part-time classes, such evening classes as will assist the person to learn the American language or advance in Americanization which may be made available to him in the school district and which he may be directed to attend by the superintendent of schools. Such conditional age and schooling certificate shall be printed on green paper. If a conditional age and schooling certificate is at the same time a limited certificate, the word "limited" shall be written or stamped diagonally across the face and the provisions of section 7766-3, General Code, shall apply except as to the color of the certificate.

HISTORY.—109 v. 385.

SECTION 7766-9. A special age and schooling certificate which shall permit a child to be employed during the hours that the school to which the holder is assigned is not in session, other than the summer vacation, or, where cooperative part-time classes approved by the state board of education have been established, shall permit a child to be employed on the alternate days, weeks, or periods, on which his division is assigned to such part-time employment may be issued to a child above fourteen years of age under all of the conditions other than age and education which apply to a regular age and schooling certificate and such additional conditions as the superintendent of

Special age  
and schooling  
certificate;  
limitations and  
conditions.



schools may deem necessary. Such special age and schooling certificate shall entitle such child to engage in occupations not forbidden to such children by section 13001, 13002 or 13007-3, General Code. Provided, however, that said sections 13001, 13002 and 13007-3, shall not be interpreted in such a way as to prevent any pupil from working on any properly guarded machine in the manual training department of any school when such work is performed under the personal supervision of an instructor.

No child under sixteen years of age shall be engaged in school and employment above nine hours altogether in any one day.

Every special age and schooling certificate shall be limited and specific and shall be in such form as will show all essential facts, and the form thereof or directions for recording the facts thereon may be prescribed by the superintendent of public instruction.

Such certificate shall be printed on light brown paper.

Such certificate shall be returned to the superintendent of schools on or before the day that school adjourns for the summer vacation except when the co-operative part-time classes continue during the summer vacation. They shall be filed and returned by employers under the same conditions and penalties as apply to regular age and schooling certificates.

HISTORY.—109 v. 387.

Who required  
to attend part-  
time day  
school.

SECTION 7767. Every child who has been granted an age and schooling certificate shall, until the age at which such certificate is no longer required by law, attend a part-time school or class for the number of hours not over eight per week that such school or class is in session, provided the board of education of the school district in which the child resides or is employed has made such school or class available. Such attendance shall be for the full term such school or class is in session, and shall begin with the first week of the school term or within one week after issuance of the age and schooling certificate. This section shall not apply to children who are employed on vacation or special certificates only. But the superintendent of schools may excuse a child from such attendance for one of the reasons provided in section 7762-5, General Code. A part-time school or class shall be defined as one which shall offer to those minors who have entered industry, instruction supplemental to their daily occupations or which will increase their civic and vocational intelligence or both and which are taught between the hours of seven o'clock in the morning and six o'clock in the afternoon of any day except a legal holiday, Saturday or Sunday, or between the hours of seven o'clock in the morning and twelve o'clock noon of Saturday.

HISTORY.—R. S. § 4022-3; 86 v. 334, §§ 3, 4; 87 v. 143; 90 v. 286, § 3; 95 v. 617; 101 v. 310; 103 v. 864 (902); 109 v. 387.

SECTION 7767-1. Attendance at a part-time school or class provided by an employer, or by a partnership, corporation or individual, or by a private or parochial school, or by a college, or by a philanthropic or similar agency shall serve in lieu of attendance at a part-time school or class provided by a board of education in case the given school or class is conducted for substantially a term and hours equivalent to those of the part-time schools or classes provided by the local board of education, and in case, further, the school or class is approved by the superintendent of public instruction. When such school or class is conducted within or in connection with the establishment in which the child is working the obligation of attendance at part-time school or class indicated in section 7767, General Code, shall apply to the children holding age and schooling certificates who are employed in the given establishment regardless of the accessibility of public part-time schools or classes.

Part-time school or class provided by employer; approval.

HISTORY.—109 v. 388.

SECTION 7767-2. The superintendent of schools shall be the judge of the availability or accessibility of a school or class in applying sections 7762-5, 7766-8, 7767 or 7767-1, General Code.

Who judge of availability or accessibility of school or class.

HISTORY.—109 v. 388.

SECTION 7769. The board of education of every city school district and of every village school district which is not a part of a county school district shall employ an attendance officer, and may employ or appoint such assistants as the board may deem advisable.

Attendance officer, employment of.

HISTORY.—R. S. § 4022-5; E6 v. 335, § 6; 87 v. 144; 87 v. 325; 90 v. 286, § 5; 95 v. 617; 101 v. 310; 104 v. 225 (232); 109 v. 388.

SECTION 7769-1. Every county board of education shall employ a county attendance officer, and may employ or appoint such assistants as the board may deem advisable. The compensation and necessary traveling expenses of such attendance officer and assistants shall be paid out of the county board of education fund. With the consent and approval of the judge of the juvenile court, a probation officer of the court may be designated as the county attendance officer or as an assistant. The compensation of the probation officers of the juvenile court so designated shall be fixed and paid in the same manner as salaries of other probation officers of the juvenile court; their traveling expenses as attendance officers which would not be incurred as probation officers shall be paid out of the county board of education fund. The county attendance officer and assistants shall work under the direction of the county superintendent of schools. The authority of such attendance officer and assistants shall extend to all the village and rural school districts which form the county school district. But this section shall not be interpreted to confine their

County attendance officer and assistants; who may be employed; compensation.

authority to investigate employment to that within the county school district.

HISTORY.—109 v. 388.

A probation officer designated under section 7769-1 G. C. as a county attendance officer, cannot legally draw two compensations, that is, one for acting as probation officer and a separate salary as county attendance officer, for the reason that section 7769-1 does not provide a salary for the county attendance officer where such county attendance officer is also a probation officer of the juvenile court. Where a probation officer is designated as county attendance officer, *only his expenses as attendance officer* is to be paid from the county board of education fund, which is disbursed by the county board of education.

The compensation of a probation officer may be increased or decreased at any time by the appointing judge not to exceed the amounts appearing in section 1662 G. C., and such compensation is paid from the county treasury. Op. Atty.-Gen. No. 2497, Oct. 24, 1921.

A county board of education may not employ an assistant county superintendent as the attendance officer (7769-1 G. C.) for the county school district, as the whole time of the assistant county superintendent is taken up in his work in that position as set forth in section 7706 G. C. Op. Atty. Gen. No. 2390, Sept. 3, 1921.

Jurisdiction of  
attendance  
officer.

SECTION 7769-2. An attendance officer or assistant may investigate any case of non-attendance at school or part-time school of a child under eighteen years of age or supposed to be under eighteen years of age resident in the district for which he is employed as attendance officer or assistant, or found in the district or enrolled in any school within the district and of any child above eighteen years of age if enrolled in any school within the district, and may take such action in accordance with law as the superintendent of schools may direct or as he himself may deem proper in the absence of specific directions.

HISTORY.—109 v. 389.

See Opinions of Attorney General No. 2390, (1921), cited under Sec. 7769-1.

Powers and  
duties of  
officer and  
assistants.

SECTION 7770. The attendance officer and assistants shall be vested with police powers and the authority to serve warrants, and shall have authority to enter workshops, factories, stores, and all other places where children are employed and do whatever may be necessary in the way of investigation or otherwise to enforce the laws relating to compulsory education and the employment of minors. The attendance officer or assistant may also take into custody any youth of compulsory school age not legally employed on an age and schooling certificate who is not attending school and shall conduct such youth to the school he has been attending or should rightfully attend.

HYSTORY.—R. S. § 4022-5; 86 v. 335; § 6; 87 v. 144; 87 v. 325; 90 v. 286, § 5; 95 v. 617; 101 v. 310; 103 v. 864 (903); 109 v. 389.

Overage certifi-  
cate, issue of,  
when.

SECTION 7770-1. Any person above eighteen years of age who believes that he is likely to be supposed to be under eighteen years of age by an employer or person engaged in the enforcement of the laws relating to com-



pulsory education and the employment of minors may apply to the superintendent of schools for an overage certificate which shall be issued to him if he is proved to be above eighteen years of age in the manner required for the proof of age to secure an age and schooling certificate.

When a person holding an age and schooling certificate reaches the age of eighteen such age and schooling certificate shall be released to him by his employer and shall have the effect of an overage certificate. Such overage certificate or released age and schooling certificate shall be conclusive evidence for an employer that the given employee has reached the age certified to therein, and the provisions of section 6245-2, General Code, shall not apply to the employer in respect to such person while engaged in an employment legal for a person of the given sex and of the age certified to therein.

When age and schooling certificate released.

HISTORY.—109 v. 389.

SECTION 7770-2. Any boy above sixteen years of age employed at the time this act goes into effect, or who had been employed before that date and after reaching the age of sixteen years, and who under former laws was not required to hold an age and schooling certificate for such employment shall be granted by the superintendent of schools an "age and pre-employment card" which shall exempt him from the provisions of this act except that he shall be required to attend part-time school or class until he reaches the age of eighteen, the same as those holding age and schooling certificates, if such part-time continuation schools or classes are in operation in the district wherein he resides, and he and his parents, guardian or other person in charge of him shall be liable to like prosecutions and penalties upon his failure to do so.

When "age and pre-employment card" required.

HISTORY.—109 v. 390.

SECTION 7770-3. Any child employed at the time this act goes into effect on a regular age and schooling certificate or who had before that date been legally employed on such a certificate shall have the right to continue to be employed on such certificate or to be granted a new age and schooling certificate under the conditions as to age and grade which prevailed at the time his first regular age and school certificate in this state was granted.

Child previously employed permitted to continue.

HISTORY.—109 v. 390.

SECTION 7770-4. Schedule: Notwithstanding the provisions of other sections of this act children between seventeen and eighteen years of age shall not be required to attend part-time schools or classes previous to September 1, 1922; and previous to said date children between seventeen and eighteen years of age shall not be counted in determining the number requisite to obligate a board of education to provide such school or class; and previous to said date

When certain provisions of law take effect.

parents and employers shall be relieved of all obligations of attendance of such children upon such classes.

HISTORY.—109 v. 390.

Who shall institute proceedings to enforce the law.

SECTION 7771. The attendance officer shall institute proceedings against any officer, parent, guardian, person, partnership or corporation violating any provision of the laws relating to compulsory education and the employment of minors, and otherwise discharge the duties described herein, and perform such other service as the superintendent of schools or board of education of the district by which he is employed may deem necessary to preserve the morals and secure the good conduct of school children, and to enforce the provisions of the above mentioned laws.

He shall be furnished with copies of the enumeration in each school district in which he serves and of the lists of pupils enrolled in the schools and shall report to the superintendent discrepancies between these lists and the enumeration.

Co-operation with Industrial Commission in law enforcement.

The attendance officer and assistants shall co-operate with the industrial commission of Ohio in enforcing the conditions and requirements of the laws of Ohio relating to the employment of minors. The attendance officer shall furnish upon request such data as he and his assistants have collected in their reports of children from six to eighteen years of age and also concerning employers to the industrial commission of Ohio and upon request to the superintendent of public instruction. He must keep a record of his transactions for the inspection and information of the superintendent of schools and the board of education; and shall make reports to the superintendent of schools as often as required by him. The superintendent of public instruction shall have power to prescribe forms for the use of attendance officers in the performance of their duties. The blank forms and record books or indexes shall be furnished to the attendance officers by the boards of education by which they are employed.

Blank forms.

HISTORY.—R. S. § 4022-5; 86 v. 335; § 6; 87 v. 144; 87 v. 325; 90 v. 286, § 5; 95 v. 617; 101 v. 310; 103 v. 864 (903); 104 v. 225 (232); 109 v. 390.

Enforcement of school attendance.

SECTION 6250. An inspector or visitor of the industrial commission shall have like authority as is vested in the attendance officer to enforce school attendance of a child found violating the school attendance laws, or he shall make complaint of such violation to such attendance officer.

HISTORY.—99 v. 32; § 4; 109 v. 389.

Report of teachers to clerks; when made.

SECTION 7772. The principal or teacher in charge of any school public, private or parochial, shall report to the clerk of the board of education of the city, exempted village, village or rural school district in which the school is situated the names, ages and places of residence of all pupils below eighteen years of age in attendance at their schools together with such other facts as said clerk may require to facilitate the carrying out of the provisions of

the laws relating to compulsory education and the employment of minors. Such report shall be made within the first two weeks of the beginning of school in each school year, and shall be corrected with the entry of such items as may be prescribed by the superintendent of public instruction within the first week of each subsequent school month of the year.

HISTORY.—R. S. § 4022-6; 90 v. 287; § 6; 95 v. 618; 101 v. 310; 104 v. 225 (233); 109 v. 391.

See Opinions of Attorney General (1917), p. 1187, cited under Sec. 7703.

SECTION 7772-1. Whenever any child of compulsory age withdraws from school the teacher of that child shall ascertain the reason. The fact of the withdrawal and the reason therefor shall be immediately transmitted by the teacher to the superintendent of schools of the city, exempted village or county school district as the case may be. If the child who has withdrawn from school has done so because of change of residence the next residence shall be ascertained and shall be included in the notice thus transmitted. The superintendent shall thereupon forward a card showing the essential facts regarding the child and stating the place of his new residence to the superintendent of schools of the district to which the child has moved.

Duties of teacher on withdrawal of child from school.

The superintendent of public instruction shall have power to prescribe the forms to be used in the operation of this section.

HISTORY.—109 v. 391.

SECTION 7773. On the request of the superintendent of schools or the board of education or when it otherwise comes to his notice, the attendance officer shall examine into any case of supposed truancy within his district, and warn the child, if found truant, and his parent, guardian or other person in charge of him, in writing, of the final consequences of truancy if persisted in. When any child of compulsory school age, in violation of the provisions of this chapter, is not attending school, the attendance officer shall notify the parent, guardian or other person in charge of such child of the fact, and require such parent, guardian or other person to cause the child to attend school forthwith; and it shall be the duty of the parent, guardian or other person in charge of the child so to cause its attendance at school. Upon the failure of the parent, guardian or other person in charge of the child to do so, the attendance officer shall make complaint against the parent, guardian or other person in charge of the child in any court of competent jurisdiction.

Examination of cases of supposed truancy; notice to parent.

HISTORY.—R. S. § 4022-7; 86 v. 336; §§ 8, 9; 90 v. 287, § 7; 95 v. 618, 101 v. 310; 103 v. 864 (903); 104 v. 225 (233); 109 v. 391.

The statute providing for criminal proceedings against a parent or other custodian in the event of the truancy of a child under his care, contemplates, not that the child be merely sent to the school-



house or schoolroom for the purpose of being sent away for refusal to obey, but that the child shall attend and obey and participate in the reasonable exercises provided for the pupils by those in charge of the school, and the statute is not satisfied by the mere appearance at school by a pupil who has been instructed by the custodian to disobey, and refuses to participate in the exercises. 21 O. N. P. (N. S.) 123.

Warning to child, parent or guardian; complaint.

SECTION 7773-1. When any child, in violation of the provisions of section 7767 or 7767-1, General Code, is not attending a part-time school or class, the attendance officer shall warn the child and his parent, guardian or other person in charge of him in writing of the final consequences of his failure to attend such school or class. If the parent, guardian or other person in charge of such child fails thereupon to cause his attendance at such part-time school or class the attendance officer shall make complaint against the parent, guardian or other person in charge of the child in any court of competent jurisdiction.

HISTORY.—109 v. 392.

Legal notice.

SECTION 7773-2. A notice under the provisions of section 7773 or 7773-1, General Code, sent by registered mail shall be a legal notice.

HISTORY.—109 v. 392.

Proceedings before juvenile court; hearing.

SECTION 7774. If the parent, guardian or other person in charge of a child, upon complaint for a failure to cause the child to attend school or a part-time school or class, proves inability to do so, then he shall be discharged, and thereupon the attendance officer shall make complaint before the judge of the juvenile court of the county that the child is a delinquent child or dependent child within the meaning of section 1644 or 1645, General Code. Such judge shall hear the complaint and if he determines that the child is a delinquent or dependent child within the meaning of one of such sections shall dispose of the child according to section 1652 or 1653, General Code.

HISTORY.—R. S. § 4022-8; 86 v. 337, § 8; 87 v. 144; 87 v. 325; 90 v. 288; 95 v. 619; 103 v. 864 (904); 109 v. 392.

Who deemed in charge of child.

SECTION 7775. If a child is residing apart from its parents, and the parents are not residents of the given school district, the person in whose residence the child resides shall be deemed the person in charge of the child for the purpose of section 7773, 7773-1 or 7774, General Code, and if several families are tenants in common of the residence in which the child resides and no one claims to be the person in charge of the child the court shall be judge of who is de facto in charge of the child.

HISTORY.—This section enacted 109 v. 392 is not analogous to former § 7775, R. S. § 4022-8; 86 v. 337, § 8; 87 v. 144; 87 v. 325; 90 v. 288; 95 v. 619. Repealed, 103 v. 864 (913), § 2.

Relief to enable child to attend school.

SECTION 7777. When an attendance officer is satisfied that a child compelled to attend school is otherwise unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support

or care for others legally entitled to his services who are unable to support or care for themselves, such officer must report the case to the president of the board of education of the city, exempted village, village or rural school district in which such child resides. Upon proof of such fact the given board of education shall furnish free of charge text-books and such other personal necessities for the child or persons entitled to his services and also such medical care in co-operation with the health commissioner of the district as may be necessary to enable the child to attend school. The expense incident to furnishing such relief must be paid from the contingent fund of the school district. Such child shall not be considered a pauper by reason of the acceptance of such relief. If the child or its parent or guardian refuses or neglects to take advantage of the provision thus made for its instruction, action may be taken against the parent or guardian or child as provided in sections 7773, 7774 or 1645, General Code.

HISTORY.—R. S. § 4022-9; 86 v. 337, § 8; 90 v. 289, §9; 95 v. 620, § 4022-9; 99 v. 477; 109 v. 392.

It is the duty of the board of education to provide for relief out of its contingent fund for any boy under fifteen years of age and any girl under sixteen years of age, who is unable to attend school because absolutely required to work at home or elsewhere in order to support himself or herself or help to support or care for others who are unable to support or care for themselves, upon the report of the truant officer that he is satisfied of such necessity. Op. Atty. Gen. (1914), p. 1536.

See Opinion of Attorney General (1915), p. 627, cited under Sec. 7739.

SECTION 7778. Every child actually resident in the state shall be amenable to the laws relating to compulsory education, and neither he nor the person in charge of him shall be excused from the operation of said laws or the penalties under them on the ground that the child's residence is seasonal or that the parent of the child is a resident of another state or that the child has attended school for the legal period in another state. The board of education in any school district shall admit without tuition charge any child actually resident in the district who would otherwise be deprived of school privileges in this state.

Who amenable to laws relating to compulsory education.

HISTORY.—R. S. § 4022-10; 86 v. 337; § 8; 90 v. 289, § 10; 95 v. 620, § 4022-10; 109 v. 393.

See Opinions of Attorney General No. 2492, (1921), cited under Sec. 7676.

SECTION 7780. Upon information obtained as in section 7795, General Code, or otherwise, the judge of the juvenile court shall fix times when he will hear the questions whether each such child not reported as being or not believed by him being already properly instructed shall be required to be sent for instruction to one of the state institutions for such handicapped children, and shall for each case thereupon issue a warrant to the attendance officer or some other suitable person to bring the child before him at

Proceedings in juvenile court.

his office at the time fixed for the hearing. He shall also issue an order on the parents, guardian or other person in charge of the child to appear before him at such hearing, a copy of which order must be served personally on the proper person by the attendance officer or other person ordered to bring the child before the judge. If on the hearing the judge of the juvenile court is satisfied that the child is not being properly educated and will be benefited by attendance at one of the state institutions for the education of such children and is a suitable person to receive instruction therein or that it is dangerous to society for the child to remain without custodial care, he may send or commit such child to such institution adapted to the needs of the children handicapped in the particular respect.

HISTORY.—R. S. § 4022-10; 86 v. 337, § 8; 90 v. 289, § 10; 95 v. 620; 103 v. 864 (904); 109 v. 393.

The judge of a juvenile court when satisfied that a blind child is not being properly educated at home, and will be benefited by attendance at the State School for the Blind, and that such child is a suitable person to receive instruction therein, may, pursuant to section 7780 General Code send or commit such child to the State School for the Blind in the manner provided by law. Op. Atty. Gen. (1920), p. 1033.

Instruction in  
institution.

SECTION 7781. Any such child committed as provided in section 7780, General Code, shall be received, instructed or cared for in the given institution unless the child is deemed by the bureau of juvenile research, after careful examination, not a proper person to be received in the given type of institution.

HISTORY.—R. S. § 4022-10; 86 v. 337, § 8; 90 v. 289, § 10; 95 v. 620, 109 v. 394.

Appointment  
of guardian.

SECTION 10916. A guardian may be appointed to take charge only of the estate of a minor. At the time of, or after the appointment of such guardian to a minor having neither father nor mother, or whose father and mother are unsuitable persons to have the custody and tuition of such minor, or whose interests for any other cause, in the opinion of the court, will be promoted thereby, it may also appoint a guardian to have the custody and provide for the maintenance and education of such minor. If the powers of the person appointed guardian be not limited by the order of appointment, he shall be guardian both of the person and estate of the ward. In every instance the court shall appoint a guardian both of the person and estate of the ward, unless in its opinion the interests of the minor will be promoted by the appointment of separate guardians.

HISTORY.—R. S. § 6255; 55 v. 54, § 2; S. & C. 671.

Powers of  
guardian of  
person and  
estate.

SECTION 10928. Each person appointed guardian of the person and estate of a minor, shall have the custody and tuition of his ward, and the management of such ward's estate during minority, unless removed or discharged from such trust, or the guardianship sooner determines from



any of the causes specified in this chapter. But the father of the minor, or if there be no father, the mother, if a suitable person, respectively, shall have the custody of the person and the control of the education of such minor.

HISTORY.—R. S. § 6264; 55 v. 54, § 11; S. & C. 672.

SECTION 10933. The following are the duties of every guardian appointed to have the custody and take charge of the estate of a minor. \* \* \*

Duties of guardians.

6. When a ward has no father, or has one who is unable or fails to educate the ward, his guardian shall provide such education for him as the amount of his estate justifies; \* \* \*

HISTORY.—S. & S. 331; S. & C. 673; R. S. § 6269; 69 v. 55, § 14; 77 v. 77; 88 v. 345; 107 v. 404; 108 v. Pt. I 366.

SECTION 10935. When a guardian is appointed to have the custody, maintenance, and education of a minor, his duties are:

Guardian of the person.

1. To protect and control the person of his ward;
2. To provide a suitable maintenance for his ward, when necessary, which must be paid out of the estate of such ward, in the hands of the guardian thereof, upon the order of the guardian of the person of such ward;
3. When such ward has no father, or mother, or having a father or mother, such parent is unable or fails to maintain or educate the ward, the guardian so appointed shall provide for him such maintenance and education as the amount of his estate justifies, which shall be paid out of his estate in the hands of the guardian thereof, upon the order of the guardian of the person of such ward;
4. To obey all the orders and judgments of the court touching the guardianship.

HISTORY.—R. S. § 6271; 55 v. 54, § 16; S. & C. 674.

SECTION 10945. The guardian of the person and estate, or estate only, when for the interest of the ward, may sell all or any part of the personal estate of the ward. Whenever necessary for the education, support, or payment of just debts, or the discharge of liens on the real estate of such minor, or if the real estate of the minor is suffering unavoidable waste, or a better investment of its value can be made, and if satisfied that a sale of it will be for the benefit of the minor, the probate court by which a guardian of the person and estate, or of the estate only, was appointed, on his application may order the real estate of such minor, or a part thereof, situated in this state, to be sold. When a person is such guardian for two or more minors whose real estate is owned by them jointly, or in common, in one application he may ask for the sale of the interest of all or any number of his wards in such real estate; and if different persons are guardians of minors so interested jointly, or in common, in the same real estate, they may join in one application. On the hearing, in either case, the court may authorize the sale of the interest

The sale of the estate of minors.

of one or more of such wards, as, in its discretion, seems right.

HISTORY.—R. S. § 6280; 56 v. 88, § 22; 59 v. 19, § 1; S. & C. 675; S. & S. 382.

Power of  
guardian to  
lease estate of  
ward.

SECTION 10962. Such guardian also may lease the real estate of his ward for a term not exceeding fifteen years, although it extends beyond the minority, if, on his application, the court appointing him, finds that such lease will be to the advantage of the ward, and is necessary to secure the improvement of the real estate, and to increase its rents, and that such increase is needed for the support and education of his ward or to pay his liabilities or any liens on, or claims against his estate, and that by such lease a sale of real estate for these purposes may be prevented.

HISTORY.—R. S. § 6296; 73 v. 207, §§ 1, 3.

Application for  
power to make  
long lease for  
improvement.

SECTION 10963. Such application shall be by petition, which shall contain a description of the real estate and a particular statement of its value and the value of all other property or effects of the ward, and his income and expenses, a detailed statement of the improvements proposed and the liabilities or expense of support and education to be provided for, the rent of the real estate as it is, and the probable increase of rent if the improvements are made, the means intended to be used in making the improvements and the proposed terms and time of the lease: and such other facts as will be pertinent to the question whether the authority for making the lease should be granted.

HISTORY.—R. S. § 6297; 73 v. 207, § 2.

Who may  
unite in ap-  
plication.

SECTION 10964. In such application the guardian may act for two or more wards, and two or more guardians of different wards may unite, when all the wards are jointly or in common interested in the real estate. The same rules shall apply as to parties and notice as in applications for the sale of real estate. On the hearing, the court shall appoint three disinterested freeholders of the county in which the real estate is situated, who are not of kin to the petitioner, to view the premises and report under oath their opinion of the probable cost of the improvements proposed, whether the improvements and the proposed lease would be for the best interest of the ward or wards, and if so, upon what terms the lease should be made. The report must be returned on or before a day named in the order for the final hearing of the case.

HISTORY.—R. S. § 6298; 73 v. 207, §§ 3; 5, 6.

Hearing and  
orders thereon.

SECTION 10965. If the report of the freeholders be in favor of the lease, and on the final hearing the court is of opinion that it will be to the advantage of the ward or wards to improve and lease the real estate, that such lease is necessary to secure the improvements and increase the rents, that such increase is needed for the support and

education of the ward or wards, or to pay his or their liabilities or liens or other claims against his or their estate and that by such lease a sale of real estate for any of these purposes may be prevented, the court shall make an order authorizing the lease to be made on such terms and in such manner as it thinks proper.

HISTORY.—R. S. § 6299; 73 v. 207, § 4.



## CHAPTER 21

### REPORTS

#### SECTION.

7784. School records shall be kept by superintendents and teachers.  
 7785. Special reports by superintendents and teachers.  
 7786. When clerk shall draw order for teacher's pay.  
 7787. Annual report of board of education.  
 7788. Report must be made on blanks fur-

#### SECTION.

- nished by superintendents.  
 7789. Duty of county auditor as to school statistics.  
 7790. Penalty for failure to make reports.  
 7791. When auditor to appoint person to make reports.  
 7792. Penalty for failure to transmit abstract of enumeration.  
 7793. Compensation of auditor.

School records shall be kept by superintendents and teachers.

SECTION 7784. Boards of education shall require all teachers and superintendents to keep the school records in such manner that they may be enabled to report annually to the county auditor and superintendent of public instruction as required by the provisions of this title and shall withhold the pay of such teachers and superintendents as fail to file the reports required of them. The records of each school, in addition to all other requirements shall be so kept as to exhibit the names of all pupils enrolled therein, the studies pursued; also, indicate the character of the work done, the standing of each pupil, and must be as near uniform throughout the state as is practicable.

HISTORY.—R. S. § 4059; 70 v. 195, § 76; 97 v. 369; 104 v. 225 (234).

Special reports by superintendents and teachers.

SECTION 7785. Such boards may require superintendents and teachers to report matters the boards deem important or necessary for information in regard to the management and conduct of the schools and to make such suggestions and recommendations as they deem advisable relative to methods of instruction, school management, or other matters of educational interest. The board of education of each city district shall prepare and publish annually a report of the condition and administration of the schools under its charge, and include therein a complete exhibit of the financial affairs of the district.

HISTORY. R. S. § 4059; 70 v. 195, § 76; 97 v. 369.

When clerk shall draw order for teacher's pay.

SECTION 7786. No clerk of a board shall draw an order on the treasurer for the payment of a teacher for services until the teacher files with him such reports as are required by the superintendent of public instruction and the board of education, a legal certificate of qualification, or a true copy thereof, covering the entire time of the service, and a statement of the branches taught. But orders may be drawn from the payment of special teachers of drawing, painting, penmanship, music, gymnastics, or a foreign language, on the presentation of a certificate to the clerk, signed by a majority of the examiners, and the filing with him of a true copy thereof, covering the time for

which the special teacher has been employed, and the specialty taught.

HISTORY.—R. S. § 4051; 70 v. 195, §§ 53, 94; 104 v. 225 (234).  
See G. C. §§ 7707 and 7829, et seq.

A teacher may not, while employed by the board of education of a school district, as a teacher in the schools of said district, be elected to the position of clerk of said board. Op. Atty. Gen. (1915), p. 2229.

A teacher may not, while employed by the board of education of a school district, as a teacher in the schools of said district, be elected to the position of clerk of said board. Op. Atty. Gen. (1918), p. 223.

Where a teacher is allowed to teach without the certificate demanded by statute with and under full knowledge of the board of education, as well as the clerk of the board, the members of the board of education participating in such illegal act, the clerk of such board and the person receiving misappropriated funds under such illegal employment, are liable for any compensation paid from school funds to such person without certificate. Op. Atty. Gen. (1919), p. 187.

A county or city board of school examiners may not legally issue certificates for a particular branch of study not enumerated in the sections of law respectively relating to such boards.

A county or city board of school examiners may not legally issue certificates for a particular branch of study not enumerated in the law but which is considered by the examining and issuing board to logically be an extension of or logically related to, a branch or branches of study already enumerated in the law.

A board of education cannot legally pay a teacher for instruction in a branch of study not enumerated in the law.

A person who holds no certificate cannot be legally paid by a board of education for teaching in schools of the district over which the board has jurisdiction. Op. Atty. Gen. (1919), p. 946.

If a teacher has a certificate of qualification, or a copy thereof, on file with the clerk of the board of education, evidencing the qualification of the teacher to teach in the school in which he is employed, covering the entire time of his service, so long as such teacher performs his duties according to the terms of his contract of employment, no liability will attach to members of the board of education for the compensation paid such teacher by reason of the withdrawal of the certificate of the grade of the high school in which such teacher is employed, by the superintendent of public instruction. Op. Atty. Gen. (1916), p. 1880.

See Opinions of Attorney General as follows:

(1918), p. 85, cited under Sec. 7877.

(1919), p. 947, cited under Sec. 7821.

(1919), p. 187, cited under Sec. 7830.

(1920), p. 888, cited under Sec. 7691.

SECTION 7787. The board of education of each district shall make a report to the county auditor, on or before the first day of August in each year, containing a statement of the receipts and expenditures of the board, the number of schools sustained, including trade or technical schools, extension schools, night schools, summer schools and other special school activities, the length of time they were sustained, the enrollment of pupils, the average monthly enrollment, and average daily attendance, the aggregate days of attendance of pupils, the number and qualifications of teachers and the number of other school employes men-

Annual report  
of board of  
education; its  
contents.

tioned in section seven thousand six hundred of the General Code employed, and their salaries, the number of school houses and school rooms, the personal service expense incurred in transporting pupils, and such other items as the superintendent of public instruction requires.

How personal  
service expense  
computed.

The personal service expense incurred in transporting pupils shall be computed as follows:

In case the district owns the vehicle of transportation and the means of locomotion, the entire compensation paid to the driver shall constitute such personal service expense attributable to such driver.

In case the district owns the vehicle of transportation, but not the means of locomotion, one-half the amount paid for transporting pupils in such vehicle shall constitute such personal service expense.

In case the district owns neither the vehicle nor the means of locomotion, one-third the amount paid for transporting pupils shall constitute such expense.

Attendance,  
how ascer-  
tained when  
school closed  
on account of  
epidemic.

The board of education of a school district situated in two or more counties shall also report the enrollment of pupils residing in each county; and the board of education of a school district situated partly in an original surveyed township or other district of county entitled to an apportionment of the interest on the common school fund or to a dividend of the rents and profits of school lands shall report the enrollment of pupils residing in such original surveyed township or district of country [county].

The aggregate days of attendance of pupils in a school which is closed for more than five consecutive school days during the year on account of an epidemic of disease or other emergency requiring such closing shall be ascertained by multiplying the average daily attendance at such school by the number of days such school would have been in session, but for such emergency.

Attendance at  
night and  
special schools.

In computing the aggregate days of attendance in night schools, extension schools, summer schools, and other special schools operated on an abnormal daily time basis, six hours of attendance on the part of a pupil shall be taken as the equivalent of one day's attendance.

When a school district is situated in two or more counties, the reports required by law shall be made to the auditor of each county.

**HISTORY.**—S. & C. 1353; R. S. § 4057; 70 v. 195, § 75; 85 v. 192, 195; 104 v. 225 (234); 108 v. Pt. II 1303 (1311). For the time at which the amendment of this section in 108 v. Pt. II 1303 takes effect, see 108 v. Pt. II 1303 (1313), § 3.

See Opinions of Attorney General No. 2804, (1922), cited under Sec. 7731.

In the apportionment of the state common school fund, the personal service expense incurred in transporting pupils shall be computed in the specific manner mentioned in section 7787 G. C., and a board of education is not authorized to compute in the cost of transportation in a school district, such additional items as depreciation, repairs, replacement, storage, taxes, insurance or interest on investment, such personal service expense being limited to the things only which appear in the statute. Op. Atty. Gen. No. 1864, Feb. 21, 1921.



The pupils of a school coming from a county, semi-public or district children's home must be counted in the "aggregate days of attendance of pupils."

Non-resident pupils attending an Ohio high school must be counted in obtaining the "aggregate days of attendance of pupils" of such high school.

Pupil is used in the school law generally in its ordinary meaning and is more comprehensive than youth as used for the purposes of enumeration therein. Op. Atty. Gen. (1920), p. 751.

See Opinions of Attorney General (1922), p. 3114, cited under Sec. 7764.

SECTION 7788. Such reports must be made on blanks which shall be furnished by the superintendent of public instruction to the auditor of each county, and by the auditor to each school clerk in his county. Each board of education, or officers or employee thereof, or other school officer in any district or county, when the superintendent so requires, shall report to him direct, upon such blanks as he furnishes any statement or items of information that he deems important or necessary.

Report must be made on blanks furnished by superintendent.

HISTORY.—R. S. § 4058; 70 v. 195, § 75; 104 v. 225 (234).

SECTION 7789. On or before the twentieth day of September, annually, the auditor of each county shall prepare, and transmit to the superintendent of public instruction an abstract of all the returns of school statistics made to him from the several districts in his county, according to the form prescribed by the superintendent, a statement of the condition of the institute fund, and such other facts relating to schools and school funds as the commissioner requires. He shall also cause to be distributed all such circulars, blanks, and other papers, including school laws and documents, in the several school districts in the county, as the commissioner may lawfully require.

Duty of county auditor as to school statistics.

HISTORY.—S. & S. 706; R. S. § 4060; 70 v. 195, § 123; 85 v. 192, 195; 104 v. 225 (234).

SECTION 7790. If the auditor neglects to prepare and return any of the abstracts or reports herein required, the county commissioners shall withhold from him all compensation for his services under this title, and he shall also be liable on his bond for any such neglect, in a sum not less than three hundred nor more than one thousand dollars, on complaint of the superintendent of public instruction, and if the clerk of the board of education of any district fails to make the annual returns of school statistics required by this title, to the county auditor, he shall be liable on his bond, in a sum not less than fifty nor more than three hundred dollars, on complaint of the county auditor, or of the board of education, to be recovered in a civil action in the name of the state, and when collected to be paid into the county treasury, and applied to the use of common schools in such district.

Penalty for neglect to make reports.

HISTORY.—S. & S. 706; R. S. § 4061; 70 v. 195, § 123; 104 v. 225 (235).

When auditor  
to appoint  
person to  
make reports.

SECTION 7791. Upon the neglect or failure of the clerk of the board of education of any district to make the reports required in this title, and by the time specified, the county auditor must appoint some suitable person, resident of the district, to make such reports who shall receive the compensation therefor, allowed by law for like services.

HISTORY.—R. S. § 4062; 70 v. 195, § 123; S. & S. 706.

Penalty for  
failure to  
transmit ab-  
stract of  
enumeration.

SECTION 7792. A county auditor who wilfully or negligently fails, in any year, to transmit to the superintendent of public instruction the abstract of enumeration by law required of him, or to perform any other duty required of him in this title, shall be liable on his bond to the extent of twice the sum lost to the school districts of his county in consequence of such failure. Such sum shall be recovered in a civil action against him, on his bond, in the name of the state. The money so recovered must be paid into the county treasury, for the benefit of such districts, and apportioned as the school funds so lost would have been apportioned.

HISTORY.—R. S. § 4063; 70 v. 195, §§ 81, 124; 104 v. 225 (235).

Compensation  
of auditor.

SECTION 7793. The commissioners of each county, annually shall allow the county auditor a reasonable compensation for his services under this title, not to exceed five dollars for each city, village and rural school district in his county, to be paid out of the county treasury. But before such allowance shall be made for any year the auditor must present to the commissioners a statement, officially certified and signed by the superintendent of public instruction, that he has transmitted to him all reports and returns of statistics for that year required by this title.

HISTORY.—R. S. § 4064; 70 v. 195, § 125; 104 v. 225 (235).

## CHAPTER 22

### ENUMERATION

#### SECTION.

2606. Report of deaf, dumb, blind, insane, and idiotic persons.
7794. Annual enumeration of school youth in district between five and eighteen years of age.
7795. Special enumeration of feeble minded, crippled and defective minors.
7796. Oath to be taken by enumerators.
- 7796-1. Copy of enumeration to be provided for Attendance officer.
7797. Compensation of enumerators.
7798. Enumeration to be separately reported where district is in two or more counties.

#### SECTION.

7799. Abstract of enumeration to be furnished county auditor.
- 7799-1. Enumeration of youth in certain original land surveys to be transmitted to auditor of state.
- 7799-2. Apportionment of common school fund to be basis of enumeration of children from five to eighteen years of age.
7800. When county auditor employs enumerator.
7801. How report made where county line divides original surveyed township.
7803. Abstract of enumeration to be transmitted to superintendent of public instruction.

SECTION 2606. In each year when an enumeration in that behalf is required, as soon as possible after the third Monday of May, the county auditor shall make and forward to the auditor of state a list of all the deaf, dumb, blind, insane, and idiotic persons in the county, with the names and postoffice addresses of their parents or guardians, as returned to him by the assessors. If he fails to make and forward such report within a reasonable time, he shall forfeit and pay to the state any sum not exceeding one hundred dollars, to be recovered and paid as provided in the preceding section.

Report of deaf, dumb, blind, insane, and idiotic persons.

HISTORY.—R. S. § 1061; 58 v. 40, §§ 2, 3; S. & S. 21, 22.

SECTION 7794. An enumeration of all youth between five and eighteen years of age resident within the district, and not temporarily there, shall be taken in each school district annually during the four weeks ending on the fourth Saturday of May. This enumeration shall designate the name of each child, his sex, his age, name of his parent, location of his residence, and what school building and grade he attends, and shall indicate in separate columns whether each child is from five to six years of age or from sixteen to eighteen years of age and whether he is a resident of the Virginia Military District, the Connecticut Western Reserve, the United States Military District, the French grant or any one of the three tracts of the Moravian lands, or in any original surveyed township or fractional township to which belongs section sixteen or other land in lieu thereof. Such enumeration shall be taken under the supervision of the attendance officer of the county, exempted village or city school district. The superintendent of public instruction may prescribe forms and suggest improved methods of taking and recording such enumerations.

Annual enumeration.

HISTORY.—107 v. 357 (378); 109 v. 394. Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357



(381), § 58, P. & A. Code § 7794, which was R. S. § 4030; 71 v. 15, § 77; 85 v. 192; 87 v. 80; 93 v. 312; 99 v. 80, was repealed in 107 v. 357 (381) (382), § 59.

The pupils of a school coming from a county, semi-public or district children's home, must be counted in the "aggregate days of attendance of pupils." Non-resident pupils attending an Ohio high school must be counted in obtaining the "aggregate days of attendance of pupils" of such high school. Pupil is used in the school law generally in its ordinary meaning and is more comprehensive than youth as used for the purposes of enumeration therein. Op. Atty. Gen. (1920), p. 751.

See Opinions of Attorney General as follows:

No. 2495, (1921), cited under Sec. 7681.

(1920), p. 751, cited under Sec. 7787.

Additional  
data to be ob-  
tained.

SECTION 7795. The person taking such enumeration shall make every effort to secure an accurate enumeration of all feeble-minded and epileptic persons between one and twenty-one years of age, and of all crippled, blind or partially blind and deaf children between the same ages and shall place in a separate list the names and the other data regarding such, which data shall include a statement of the disposition of each such child for education and care; but the name of each child between five and eighteen years of age shall appear also on the general enumeration list, with cross-reference to the special list.

HISTORY.—R. S. § 4030; 90 v. 80; 93 v. 312; 87 v. 80; 85 v. 192; 71 v. 15, § 77; 109 v. 394.

When and  
how enumera-  
tion taken.

SECTION 7796. On or before the last Saturday in April the board of education of each school district shall appoint one or more persons to take the enumeration provided for in the next two preceding sections. Each person appointed shall take an oath or affirmation to take the enumeration accurately and truly to the best of his skill and ability, and in accordance with the directions of the attendance officer. He shall make the return thereof, with all details secured, to the clerk of the board of education, with his affidavit that he has taken and returned the enumeration accurately and truly to the best of his knowledge and belief, and that such list contains the names of all such youth so enumerated and no others. The clerk of the board of education or any officer authorized to administer oaths may administer such oath or affirmation and take and certify such affidavit. The clerk shall keep the enumerator's report in his office for five years.

HISTORY.—R. S. § 4031; 71 v. 15, § 77; 80 v. 192; 97 v. 365; 109 v. 394.

Copy of enu-  
meration for  
attendance  
officer; index  
required.

SECTION 7796-I. A board of education shall provide a copy of the enumeration for the use of the attendance officer and may provide for the keeping of an index of the enumeration for purposes of ready reference in such form as the superintendent of public instruction may prescribe. Such index shall be made available for consultation by non-public schools not conducted for profit, by philanthropic organizations and other responsible persons interested in child welfare.

HISTORY.—109 v. 395.

SECTION 7797. Reasonable compensation shall be paid by boards of education to those employed to take the enumeration after they have made proper returns to the clerk. A board of education may require that the persons employed to take the enumeration shall report all unoccupied houses in the district, and also that the enumeration be arranged for report in forms which will be convenient for checking or reference, and may pay compensation for such services. A board of education may employ a teacher or attendance officer to take the enumeration.

Compensation;  
report; forms.

HISTORY.—R. S. § 4031; 71 v. 15, § 77; 80 v. 192; 97 v. 365; 109 v. 395.

SECTION 7798. When a school district includes territory situated in two or more civil counties persons taking the enumeration must report separately the children residing in each respective county. The clerk of the board shall make returns, as provided in section 7799, General Code, to the auditor of each county.

When district  
situated in  
two or more  
counties.

HISTORY.—R. S. § 4032; 70 v. 195, § 78; 89 v. 97; 97 v. 366; 109 v. 395.

SECTION 7799. On or before the first Saturday in August the clerk of each board of education shall transmit to the county auditor an abstract of the enumeration of children in the school district according to a form prescribed by the superintendent of public instruction with an oath or affirmation endorsed thereon that it is a correct abstract of the returns made to him under oath or affirmation. The oath or affirmation of the clerk may be administered and certified to by any member of the board of education or by the county auditor. In village and rural school districts there shall be included with the abstract the entire list with all details of feeble-minded, epileptic, crippled, blind or partially blind and deaf children.

Clerk shall  
transmit ab-  
stract of enu-  
meration to  
county auditor.

HISTORY.—R. S. § 4035; 70 v. 195, § 79; 85 v. 193; 97 v. 366; 104 v. 225 (235); 109 v. 395.

SECTION 7799-1. Immediately upon the receipt by the county auditor of each county, any part of which lays [lies] within the Virginia military district, the Connecticut western reserve, the French grant, each of the three tracts of the Moravian lands, or the United States military district, of the enumeration of youth of school age residing within either of said districts of country, the county auditor shall transmit to the auditor of state a certified statement of the number of youth of school age residing within each of such districts of country as shown by the abstract of the enumeration made to him pursuant to sections 7798 and 7799 of the General Code.

Enumeration  
of youth in  
certain dis-  
tricts trans-  
mitted to  
auditor of  
state.

HISTORY.—107 v. 357 (378). Each section of this act, and every part thereof, is declared to be an independent section in 107 v. 357 (381), § 58.

SECTION 7799-2. For the purpose of the apportionment of the common school fund the enumeration shall mean in the case of every enumeration subsequent to the going into effect of this section the enumeration of children from

Meaning of  
enumeration  
in relation to  
apportionment  
of funds.

five to eighteen years of age; and in the year 1921 if the enumeration is not taken in May on this new basis, the enumeration shall be taken in the four weeks following the date when this section shall become effective, and the dates of the required reports shall be correspondingly altered.

HISTORY.—109 v. 395.

When clerk fails to take or transmit enumeration, auditor to act.

SECTION 7800. If the clerk of any board of education fails to transmit such abstract of enumeration on or before the first Saturday of August the auditor at once shall demand it from him. In case the enumeration has not been taken as required by law or the abstract be not furnished without delay the auditor shall employ competent persons to take the enumeration, who shall make return directly to the auditor who may administer to each such person employed the oath or affirmation required. He shall allow each person so employed by him a reasonable compensation to be paid out of the general county fund. If the necessity of the employment by the auditor of persons to take the enumeration arose from the failure of the clerk of a board of education to perform his duties the expense of taking the enumeration may be recovered from said clerk in an action in the name of the state and the amount so collected shall be paid into the general county fund. Otherwise the expense of taking the enumeration by those employed by the auditor shall be charged by the auditor against the school district, and the amount thereof shall be deducted by the auditor from funds due to such district at the next semi-annual settlement.

HISTORY.—R. S. § 4036; 70 v. 195, § 80; 85 v. 193; 97 v. 366; 109 v. 395.

When county line divides original surveyed township.

SECTION 7801. If parts of an original surveyed township or fractional township are situated in two counties, the auditor of the county in which the smallest part is situated, so soon as the abstracts of enumeration are received by him from the clerks of the boards of education, shall certify to the auditor of the county in which the largest part is situated the enumeration of youth residing in the part of the township situated in his county. If parts of such township or fractional township are situated in more than two counties, like certificates of enumeration must be transmitted to the auditor of the county containing the greatest relative portion of such township, by the auditors of the other counties containing portions thereof. When it is uncertain which county contains the greatest relative portion of such township, such certificates shall be transmitted to the auditor of the oldest county, by the other auditor or auditors. If the land granted by congress to such township or fractional township for the support of public schools has been sold, the auditor to whom such certificates are transmitted must notify the auditor of state, without delay, that such enumeration has been certified.

HISTORY.—R. S. § 4037; 70 v. 195, §§ 121, 130.



SECTION 7803. On or before the third Saturday of August the auditor of each county shall transmit to the superintendent of public instruction on blanks furnished by him a duly certified abstract of the enumeration returns made to him.

Auditor shall  
transmit ab-  
stract to  
superin-  
tendent.

HISTORY.—R. S. § 4039; 70 v. 195, § 81; 85 v. 193; 97 v. 366; 104 v. 225 (236); 109 v. 396.

## CHAPTER 23

### STATE, COUNTY AND CITY EXAMINERS

#### SECTION.

- 7805. State board; appointment and qualifications.
- 7806. Terms and vacancies.
- 7807. Issue of life certificates and record to be kept.
- 7807-1. Experience and professional training for elementary life certificates.
- 7807-2. Experience and training for high school certificates.
- 7807-3. When elementary certificate may be granted without further examination.
- 7807-4. When high school certificate may be granted without further examination.
- 7807-5. When special certificate may be granted.
- 7807-6. Renewal of certificates.
- 7807-7. When state life high school certificates shall be issued to holder of degree.
- 7807-8. When life elementary certificate shall issue.
- 7807-9. Provisional certificates valid for four years shall be granted; fee.
- 7807-10. Provisional certificates, in kindergarten, first and second grades.
- 7807-11. Issue of life certificates without examination.
- 7807-12. Issue of life certificates covering special subjects.
- 7808. Effect thereof; may be revoked for cause.
- 7809. Examination fees.
- 7810. Compensation of examiners.
- 7811. County board; how composed.
- 7812. Who eligible as examiner.
- 7813. Terms; revocation of appointment.
- 7814. Vacancies.
- 7815. Organization of board; duties of officers.
- 7816. Rules and regulations.
- 7817. Meetings each year for examination of applicants; no private examination nor antedating certificates.
- 7818. Power of majority to grant certificates; applicant may elect to take one-half the subjects at each of two regular examinations.
- 7819. Uniform system of examination.
- 7820. Disposition of fees.
- 7821. County certificates valid in village or rural districts of county. Number of one-year and three-year certificates that may be issued.
- 7821-1. Five and eight year certificates; how renewed.
- 7821-2. How two-year and three-year primary and special elementary and high school certificates may be renewed.
- 7821-3. How two-year and three-year certificates may be renewed as a five-year certificate.
- 7822. Qualifications required for elementary certificates.
- 7823. Qualifications required for high school certificates.
- 7823-1. Qualifications required of applicants for high school and special certificates.
- 7823-2. Qualifications and examination of teachers to give vocational instruction.
- 7823-3. Training determined by superintendent; issue of certificates.

#### SECTION.

- 7824. When certificates may be issued without formal examination.
- 7825. Additional tests to written examination; when and by whom made.
- 7826. Temporary certificates may be issued, when.
- 7827. Minimum age limit.
- 7828. Fees for examiners conducting investigation.
- 7829. What kind of certificates shall be issued.
- 7830. Elementary certificates; branches qualified to teach.
- 7831. High school certificate.
- 7831-1. Teacher must have certificate of character and qualifications.
- 7831-2. Branches in which applicant for high school certificate examined.
- 7832. Teachers' special certificates.
- 7832-1. Teachers' emergency certificate.
- 7832-2. To whom one year elementary certificates granted.
- 7832-3. To whom one year elementary certificates granted.
- 7833. Recognition or renewal of certificates.
- 7834. Compensation of examiners.
- 7835. Expenses of board.
- 7836. Annual report of clerk; his bond.
- 7837. No additional compensation as clerk.
- 7838. City board of school examiners, appointment term.
- 7838-1. Appointment of board of examiners in exempted village school district.
- 7839. Removal and vacancies.
- 7840. Standard of qualifications prior to and after year 1924.
- 7841. Special examiners.
- 7842. Organization of board; duties of officers; clerk's bond.
- 7843. Meetings for examination; notice.
- 7844. Certificates for one and three years.
- 7845. Certificates for five and eight years.
- 7846. Renewal of two and three year certificates.
- 7847. To whom law applies.
- 7847-1. Questions for examination.
- 7848. Substitute for practical teaching test.
- 7848-1. Issue of certificates to teach special classes for deaf, feeble-minded, etc.; qualification.
- 7849. Temporary certificates.
- 7851. Fees and per diem of examiners for conducting examination provided for in Section 7827.
- 7852. City board of examiners may require teachers in elementary schools to be examined in drawing, music and physical training.
- 7852-1. Oath of teachers; form of oath; where filed.
- 7852-2. Teachers in private or parochial school shall take oath of allegiance.
- 7852-3. Penalty for permitting teachers to enter upon duties without taking oath.
- 7853. Compensation of members and clerk; incidental expenses.
- 7854. Duties of clerk of city board of school examiners.
- 7855. Disposition of examination fees.
- 7856. Consideration of applicants' answers; issue of certificates or notice of failure.
- 7857. Manuscripts shall be kept on file 60 days; review.
- 7858. How appeal may be taken; result.

## STATE BOARD OF EXAMINERS

SECTION 7805. There shall be a state board of school examiners, consisting of five competent persons, resident of the state, to be appointed by the superintendent of public instruction. Not more than three of them shall belong to the same political party.

State board;  
appointment  
and qualifica-  
tions.

HISTORY.—S. & S. 709; R. S. § 4065; 70 v. 195, § 85; 81 v. 95; 85 v. 330; 104 v. 100.

A member of a board of school examiners is said in State, ex rel., v. Board of Education, 4 O. C. D. 540, not to be an officer within the meaning of Art. II, § 20, of the Ohio constitution, which forbids a change in the compensation of an officer during his term. Accordingly, the board of education may reduce the compensation of an examiner during his term of office, but such reduction cannot be retroactive.

When the state board of school examiners refuse to grant a certificate to an applicant as provided by sections 7805, 7807-6 and 7807-7 G. C., 104 O. L. 100, upon evidence, not submitted to the board by the applicant, upon the questions of good moral character, professional experience and ability, and the period of successful teaching therein prescribed, the board should, upon request of the applicant, disclose to him all such evidence and the source thereof. Op. Atty. Gen. (1916), p. 1364.

SECTION 7806. The term of office of such examiners shall be five years. The term of one of the examiners shall expire on the thirty-first day of August each year. When a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the superintendent of public instruction shall fill it by appointment for the full or unexpired term, as the case demands.

Terms and  
vacancies.

HISTORY.—S. & S. 709; R. S. § 4065; 70 v. 195, § 85; 81 v. 95; 85 v. 330; 104 v. 100.  
See G. C. § 7805.

SECTION 7807. The board thus constituted may issue life certificates to such persons as possess the scholarship required in the several sections of this chapter and exhibit satisfactory evidence of good moral character and of professional experience and ability. A record of the proceedings and of each certificate granted shall be kept in the office of the superintendent of public instruction.

To whom life  
certificates may  
be issued;  
record of  
proceedings.

HISTORY.—S. & S. 709; R. S. § 4066; 70 v. 195, § 86; 78 v. 39; 85 v. 330; 104 v. 100; 109 v. 188.

SECTION 7807-1. Applicants for elementary life certificates and special life certificates, not provided for in sections 7807-6 or 7807-8 shall have completed fifty months of successful teaching experience, a four year high school course or the equivalent, and college or normal credit aggregating one year, including one half year of professional training, and shall complete such additional requirements and tests as are prescribed by the state board of school examiners.

Experience and  
professional  
training for  
elementary  
life certifi-  
cates.

HISTORY.—104 v. 100; 108 v. Pt. I 683.

Under Sec. 7807-1 and 7807-2, G. C., the board of state school examiners may or may not require of applicants for life certificates



additional requirements or tests or they may require one and omit the other, as they may desire.

To secure credit for a two-year normal course such course must have been taken in an institution approved by the superintendent of public instruction in any case not specifically otherwise provided by law.

The state board of school examiners must determine whether or not the experience in teaching had by an applicant for a certificate is successful teaching experience, the evidence of which must be produced by the applicant. If it be successful teaching experience in the judgment of the board, from the evidence produced, full credit must be given. Such experience may be had in the schools of any school district and must be considered by the board.

A rule that three months of teaching is the equivalent of one month's success in teaching is contrary to the content and purpose of the law. *Op. Atty. Gen. (1920), p. 1116.*

Experience  
and training  
for high  
school life  
certificates.

SECTION 7807-2. Applicants for high school life certificates shall have completed fifty months of successful teaching experience, a four year high school course or the equivalent, and college or normal credit aggregating two years, including one half year of professional training, and unless applying under section 7807-6 or 7807-7 shall complete such additional requirements and tests as are prescribed by the state board of school examiners.

HISTORY.—104 v. 100 (101); 108 v. Pt. I 683 (684).

See Opinions of Attorney General (1920), p. 1116, cited under Sec. 7807-1.

When elementary certificate may be granted without further examination.

SECTION 7807-3. A graduate from any normal school, teachers' college, college or university, who has completed a full two years' academic and professional course in such institution and who also possesses a first grade high school diploma or its equivalent shall upon application to the superintendent of public instruction and the payment of a fee of one dollar be granted without further examination a provisional elementary certificate valid for four years in any school district within the state; provided that such institution has been approved by the superintendent of public instruction.

HISTORY.—104 v. 100 (101).

Under the provisions of Section 24, G. C., the fees received by the superintendent of public instruction from applicants during any week, for the granting of certificates and renewal of certificates by such superintendent of public instruction, must be paid into the state treasury on or before Monday of the following week, and there is no provision in existing law for the return of such fees even though the certificate or the renewal of any certificate has not been granted.

The certificate from the state superintendent of public instruction required to be presented to the state dental board by a person who desires to be licensed as dentist comes within the above rule, for Sec. 1321-1, G. C., specifically provides that the fee for such certificate shall be paid into the state treasury and there is no provision in existing law for its return.

Where a certificate issued by the superintendent of public instruction is lost or destroyed and the holder thereof makes application for a duplicate certificate, the superintendent of public instruction should charge the same fee for a duplicate certificate. Where the original has become lost or destroyed, as is required in the case of the original issue of any certificate such fee to be

turned into the state treasury in accordance with the provisions of Sec. 24, G. C. Op. Atty. Gen. (1920), p. 567.

See Opinions of Attorney General (1916), p. 1969, cited under Sec. 7658.

SEC. 7807-4. A graduate from any normal school, teachers' college, college or university, who has completed a full four years' academic and professional course in such institution and who also holds a certificate of graduation from a first grade high school or its equivalent shall upon application to the superintendent of public instruction, and the payment of a fee of one dollar, be granted without further examination, a provisional high school certificate valid for four years in any school district within the state; provided that such institution has been approved by the superintendent of public instruction.

When high school certificate may be granted without further examination.

HISTORY.—104 v. 100 (101).

See Opinions of Attorney General as follows:

(1920), p. 567, cited under Sec. 7807-3.

(1916), p. 1969, cited under Sec. 7658.

SECTION 7807-5. A graduate from any normal school, teachers' college, college or university, who has completed a special two year course, with training school experience, in music, drawing, penmanship, manual training, physical culture, domestic science, agriculture, kindergartening, any modern language, or such other studies as are required to be taught by special teachers or supervisors and who also possess a first grade high school diploma or its equivalent, shall upon application to the superintendent of public instruction and the payment of a fee of one dollar, be granted without further examination a provisional special certificate in such subject or subjects valid for four years in any school district within the state; provided that such institution has been approved by the superintendent of public instruction.

When special certificate may be granted.

HISTORY.—104 v. 100 (101).

See Opinions of Attorney General (1920), p. 567, cited under Sec. 7807-3.

SECTION 7807-6. The superintendent of public instruction shall renew state provisional certificates upon application by the holders thereof, accompanied by a fee of one dollar, upon satisfactory evidence of the applicant's success in teaching. It shall be the duty of the state board of school examiners to issue without examination to a holder of a state provisional certificate, a life certificate of similar kind, upon satisfactory evidence that the holder thereof has completed at least twenty-four months of successful teaching after receiving such provisional certificate.

Renewal of certificates.

HISTORY.—104 v. 100 (101); 107 v. 458.

See Opinions of Attorney General as follows:

(1916), p. 1364, cited under Sec. 7805.

(1920), p. 567, cited under Sec. 7807-3.

(1920), p. 1116, cited under Sec. 7807-1.

When state high school certificate shall be issued to holder of degree,

SECTION 7807-7. The state board of school examiners shall issue without examination, a state life high school certificate to the holder of a degree from any normal school, teachers' college, or university that has been approved by the superintendent of public instruction, upon satisfactory evidence that the holder thereof has completed at least fifty months of successful teaching.

HISTORY.—104 v. 100 (102).

See Opinions of Attorney General as follows:

(1916), p. 1364, cited under Sec. 7805.

(1920), p. 1116, cited under Sec. 7807-1.

When life elementary certificate shall issue.

SECTION 7807-8. The state board of school examiners shall issue, without examination, a state life elementary certificate to one who has completed a four-year high school course or its equivalent, and has completed a two-year normal course in an institution approved by the superintendent of public instruction and, in addition thereto, has had at least fifty months of experience in teaching satisfactory to the state board of examiners; or who has completed a four-year high school course or its equivalent, and a one-year normal course in a school approved by the superintendent of public instruction, or who has done such professional reading and study as the superintendent of public instruction may require, and, in addition thereto, has had at least one hundred months of experience in teaching satisfactory to the state board of examiners. Provided, however, that no life certificate authorized by this subsection to be issued to graduates of a one-year normal course, shall be issued unless application therefor be made prior to the year nineteen hundred and twenty.

HISTORY.—107 v. 458.

Under the provisions of Section 7807-8, G. C., the superintendent of public instruction is authorized to prescribe a course of professional reading and study, upon the completion of which and compliance with other conditions imposed by law, a state life elementary certificate may be issued without examination subsequent to 1920. Op. Atty. Gen. (1920), p. 545.

See Opinions of Attorney General (1920), p. 1116, cited under Sec. 7807-1.

Provisional certificate valid for four years shall be granted; fee.

SECTION 7807-9. State provisional certificates valid for four years to teach vocational agriculture, home economics, specific industrial vocational subjects, or other subjects, taught in classes supported with federal aid and under the supervision of the state board of education, shall be granted by the superintendent of public instruction upon formal application and the payment of a fee of one dollar, to those who have completed such requirements for the particular certificates as shall have been established by the superintendent of public instruction with the approval of the state board of education.

HISTORY.—108 v. Pt. I 622.

See Opinions of Attorney General (1920), p. 567, cited under Sec. 7807-3.



SECTION 7807-10. State provisional certificates valid for four years to teach in kindergarten and first and second grades of elementary schools shall be granted by the superintendent of public instruction upon formal application and the payment of a fee of one dollar, to those who have completed a four year high school course or the equivalent and at least a two year course in an approved school for the training of teachers, provided the course as conducted is approved by the superintendent of public instruction for the specific purpose.

Provisional certificates, in kindergarten, first and second grades.

HISTORY.—108 v. Pt. I 683 (684).

See Opinions of Attorney General (1920), p. 567, cited under Sec. 7807-3.

SECTION 7807-11. Notwithstanding the provisions of sections 7807-1 and 7807-2, General Code, the state board of school examiners, upon recommendation of the superintendent of public instruction shall issue without examination to a holder of a five-year or an eight-year certificate a life certificate of similar kind.

When life certificates may be issued to holder of five or eight year certificate.

Such board may issue to a person recommended by the superintendent of public instruction and who has completed fifty months of teaching experience a state life elementary or special certificate if such person is a graduate of a two-year course adapted to the preparation of a teacher for the given type of service or a state life high school certificate if such person is a graduate of a four-year college course.

Elementary or special certificate.

HISTORY.—109 v. 189.

SECTION 7807-12. The state board of school examiners may issue without examination to a person who has had at least fifty months of experience in teaching satisfactory to such board and who has the qualifications prescribed for certain provisional certificates under the authority of sections 7807-5, 7807-9 and 7807-10, General Code, a state life certificate to teach such subjects in such grades and classes as he would be entitled to teach on the corresponding provisional certificate which he is qualified to receive.

Life certificate to teach certain subjects in certain grades.

HISTORY.—109 v. 189.

SECTION 7808. All certificates issued by such board shall be countersigned by the superintendent of public instruction. They shall supersede the necessity of any and all other examinations of the persons holding them, by any board of examiners, and be valid in any school district in the state, unless revoked by the state board for good cause.

Effect thereof; may be revoked for cause.

HISTORY.—S. & S. 709; R. S. § 4067; 70 v. 195, § 87; 104 v. 100 (102).

SECTION 7809. Each applicant for a certificate shall pay to the board of examiners a fee of five dollars. The clerk of the board must pay to the state treasurer, all fees received, and file with the state auditor a written statement of the amount.

Examinatic fees.

HISTORY.—R. S. § 4068; 85 v. 330; 82 v. 100; 70 v. 195, § 88; S. & S. 709.

Compensation  
of examiners.

SECTION 7810. Each member of the board shall receive five dollars for each day he is necessarily engaged in official service, and also his actual and necessary expenses, to be paid out of the state treasury on the order of the state auditor. All books, blanks and stationery required by the board shall be furnished by the secretary of state.

HISTORY.—S. & S. 709; R. S. § 4068; 70 v. 195, § 88; 82 v. 100; 85 v. 330; 104 v. 100 (102).

#### COUNTY BOARD OF EXAMINERS

County board;  
how composed.

SECTION 7811. There shall be a county board of school examiners for each county, consisting of the county superintendent, one superintendent, high school principal or assistant county superintendent and one other competent teacher, the latter two members to be appointed by the county board of education. The teacher so appointed must have at least two years' experience as teacher or superintendent, and be a teacher or supervisor in the public schools of the county school district or of any exempted village school district. Should he remove from the county during his term, his office thereby shall be vacated and his successor appointed.

HISTORY.—R. S. § 4069; 70 v. 195, § 89; 85 v. 330; 88 v. 495; 97 v. 369; 104 v. 100 (102); 109 v. 246.

See Opinions of Attorney General as follows:

(1914), p. 642, cited under Sec. 7834.

(1915), p. 2457, cited under Sec. 7812.

(1919), p. 947, cited under Sec. 7821.

Who eligible  
as examiner.

SECTION 7812. No examiner shall teach in, be connected with, or financially interested in any school which is not supported wholly or in part by the state, or be employed as a paid instructor in any teachers' institute in his own county; nor shall any person be appointed as, or exercise the office of examiner who is agent of or financially interested in any book publishing or book selling firm, company or business, or in any educational journal or magazine. If an examiner becomes connected with or interested in any school not under state control, or is employed in any such institution in his own county, or becomes an agent of or interested in any book company or journal, or fails to hold the necessary teachers' certificate, or removes from the county, the county board of education upon being apprised of such fact, forthwith shall remove such examiner and appoint his successor.

HISTORY.—R. S. § 4069; 70 v. 195, § 89; 85 v. 330; 88 v. 495; 97 v. 369; 104 v. 100 (102).

The superintendent of a county school district as a member of the county board of school examiners may not teach in, be connected with or become financially interested in a summer school or any school which is not supported wholly or in part by the state. Op. Atty. Gen. (1915), p. 2457.

SECTION 7813. The term of office of such appointive school examiners shall be two years. The term of one of the examiners shall expire on the thirty-first day of August, each year. The county board of education shall revoke the appointment of any examiner, upon satisfactory proof that he is inefficient, intemperate, negligent, guilty of immoral conduct, or that he is using his office for personal or private gain.

Term. Re-  
vocation of  
appointment.

HISTORY.—R. S. § 4069; 70 v. 195, § 89; 85 v. 330; 88 v. 495; 97 v. 369; 104 v. 100 (102).

SECTION 7814. When a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the county board of education promptly shall fill it by appointment for the full or unexpired term, and within ten days, report this to the superintendent of public instruction, together with the names of the other members of the board and the date of the expiration of their several terms of office.

Vacancies.

HISTORY.—R. S. § 4069; 70 v. 195, § 89; 85 v. 330; 88 v. 495; 97 v. 369; 104 v. 100 (102).

SECTION 7815. Annually, in the month of September, the board of county school examiners shall organize by choosing from its members a president and a vice president. The county superintendent shall be the clerk of the board. The president shall preside at all the meetings of the board. In his absence the vice president shall preside. The clerk shall keep a full and accurate record of the proceedings of the board, showing the number, date and character of each certificate issued, to whom, for what term and what branches of study, with such other statistics relating to the examination and proceedings of the board as the superintendent of public instruction requires, in the form and manner required by him, and make a report of all such items annually on or before the first day of September.

Organization  
of board;  
duties of  
officers.

HISTORY.—R. S. § 4070; 70 v. 241, § 95; 85 v. 195; 92 v. 215; 97 v. 370; 104 v. 100 (103).

SECTION 7816. The board shall make all needful rules and regulations for the proper discharge of its duties and the conduct of its work, subject to statutory provisions and the approval of the superintendent of public instruction.

Rules and  
regulations.

HISTORY.—R. S. § 4070; 70 v. 241, § 95; 85 v. 195; 92 v. 215; 97 v. 370; 104 v. 100 (103).

The board of county examiners has no authority to honor a certificate of teachers who have taught in a foreign state, or to issue certificates to them without taking an examination in this state. Op. Atty. Gen. (1913), p. 1341.

SECTION 7817. Each board shall hold public meetings for the examination of applicants for county teachers' certificates on the first Saturday of September, May, and July and on the last Friday of August of each year unless any such day falls on a legal holiday, in which case it shall be held on the corresponding day of the succeeding

Meetings each  
year for ex-  
amination of  
applicants.  
No private  
examination  
nor antedating  
certificates.



week, at such place within the county as, in the opinion of the board, best will accommodate the greatest number of applicants. In no case shall the board hold any private examinations or antedate any certificate.

HISTORY.—R. S. § 4071; 70 v. 195, §§ 90, 91; 89 v. 245; 92 v. 215; 97 v. 370; 104 v. 100 (103); 108 v. Pt. I 66.

Under the provisions of section 7817, G. C., as amended, 104 O. L., 103, county boards of school examiners are no longer required or authorized to publish notice of the time and place of holding public meetings for the examination of applicants for county teachers' certificates. Op. Atty. Gen. (1915), p. 727.

See Opinions of Attorney General (1914), p. 642, cited under Sec. 7834.

Power of majority to grant certificates.

SECTION 7818. A majority of the board may examine applicants and grant certificates. An applicant for a county teachers' certificate may, if he so elects, take one-half of the subjects in which he is to be examined on one day and the remaining one-half not later than the second regular examination day thereafter. The subjects to be taken the first day by an applicant shall be determined by the board of county examiners. If an applicant electing to take the examination in two days fails to obtain on the first day a grade of seventy-five per cent. or more, in any subject or subjects, such applicant may elect to be re-examined in such subject or subjects on the second day on which such applicant is to be examined. As a condition of an applicant's being admitted to take the examination he shall pay to the board for the use of the county board of education fund a fee of fifty cents. Applicants taking the examination in two parts shall make on the date when each part is taken an application accompanied with a fee of fifty cents.

Applicant may elect to take one-half the subjects at each of two regular examinations.

HISTORY.—R. S. § 4071; 70 v. 195, §§ 90, 91; 89 v. 245; 92 v. 215; 97 v. 370; 103 v. 541; 104 v. 100 (103).

Uniform system of examination.

SECTION 7819. The questions for all county teachers' examinations shall be prepared and printed under the direction of the superintendent of public instruction. A sufficient number of lists shall be sent, under seal, to the clerks of such boards of examiners not less than five days before each examination, such seal to be broken at the time of the examination at which they are to be used, in the presence of the applicants and a majority of the members of the examining board.

HISTORY.—R. S. § 4071a; 90 v. 300; 97 v. 371; 98 v. 228; 104 v. 100 (104).

Penalty for giving information about questions, see G. C. § 12939.

Disposition of fees.

SECTION 7820. The clerk of the board of county school examiners shall promptly collect all fees from applicants at each examination and pay them into the county treasury monthly. He shall file with the county auditor a written statement of the amount and the number of applicants, male and female, examined during the month. All

money thus received, shall be set apart by the auditor to the credit of the county board of education fund.

HISTORY.—R. S. § 4072; 70 v. 195, § 91; 83 v. 40; 97 v. 371; 104 v. 100 (104).

SECTION 7821. County boards of school examiners may grant teachers' certificates which shall be valid in all village and rural districts of the respective counties. Not more than three one-year certificates and not more than one three-year certificates may be issued upon examination to any one person. Such three-year certificate may be renewed twice only on proof of successful teaching.

Certificates granted by county boards.

All such county certificates other than temporary certificates shall be valid for one, two or three years from the first day of September following the day of the examination, except that certificates earned on the first Saturday of September shall be valid from that day to the first of the first, second or third September following.

HISTORY.—R. S. § 4073; 70 v. 195; § 92; 79 v. 83; 81 v. 55; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350; 102 v. 418; 104 v. 100 (104); 109 v. 189.

Every teacher is entitled to three effective one-year certificates so that when two or more one-year certificates are issued in any one year all will count as but one in making up the sum total of three.

The three one-year certificates mentioned in section 7821 G. C. must be issued in three separate years to make up the limit allowed. Op. Atty. Gen. (1917), p. 1349.

A county or city board of school examiners may not legally issue certificates for a particular branch of study not enumerated in the sections of law respectively relating to such boards.

A county or city board of school examiners may not legally issue certificates for a particular branch of study not enumerated in the law but which is considered by the examining and issuing board to logically be an extension of or logically related to, a branch or branches of study already enumerated in the law.

A board of education cannot legally pay a teacher for instructing in a branch of study not enumerated in the law.

A person who holds no certificate cannot be legally paid by a board of education for teaching in schools of the district over which the board has jurisdiction. Op. Atty. Gen. (1919), p. 946.

SECTION 7821-I. Five-year and eight-year certificates shall be renewed by the superintendent of public instruction upon proof of the successful teaching of the holders thereof. Each application for renewal shall be accompanied by a fee of fifty cents. Such renewals shall be of state-wide validity.

Renewal of five and eight year certificates.

Five-year and eight-year certificates that were permitted to expire without application for renewal at the time of such expiration may be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully for five years.

HISTORY.—104 v. 100 (104); 109 v. 189.

See Opinions of Attorney General (1920), p. 567, cited under Sec. 7807-3.

Two-year,  
three-year  
and special  
certificates;  
renewals.

SECTION 7821-2. Two-year and three-year primary, special, elementary and high school certificates which are re-renewals of certificates granted prior to May 17, 1914, may be renewed an indefinite number of times by local boards of examiners upon proof that the holders continue to teach successfully.

HISTORY.—104 v. 100 (104); 109 v. 189.

See Opinions of Attorney General (1919), p. 947, cited under Sec. 7821.

Renewal by  
superintendent  
of two and  
three-year  
certificates.

SECTION 7821-3. A two-year or three-year certificate which is a renewal of a certificate issued prior to September 1, 1914, may be renewed as a five-year certificate by the superintendent of public instruction if the holder has taught eight years, provided the holder is proved successful and progressive to the satisfaction of the superintendent of public instruction. Each application for such renewal accompanied by a fee of fifty cents shall be filed in the office of superintendent of public instruction.

HISTORY.—109 v. 190.

Qualifications  
required for  
elementary  
certificates.

SECTION 7822. Applicants for a one-year or a three-year elementary certificate shall possess an amount of professional training, consisting of class room instruction in an institution recognized by the state superintendent of public instruction for the training of teachers, not less than the following: After January 1, 1920, not less than thirty weeks of such instruction; after January 1, 1921, not less than one year of such class room instruction, in a recognized school for the training of teachers, provided, however, that applicants who have had, prior to January 1, 1920, eight years of successful teaching experience shall be eligible to examination and certification as though possessing professional training as required above in this section, and high school training as required in section 7823. General Code and provided further, that in the cases of applicants who have credit for at least one full academic year of work in an institution of learning recognized by the state superintendent of public instruction as being of university or college rank, such credit shall, until January 1, 1924, be accepted in lieu of the required professional training.

HISTORY.—R. S. § 4073; 70 v. 195, § 92; 79 v. 83; 81 v. 65; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350; 104 v. 100 (104); 106 v. 340; 107 v. 621 (626); 108 v. Pt. II 1274.

The effect of the provision of the first part of section 7822, G. C., is to extend the authority of and impose the duty on a county board of school examiners to examine an applicant without previous professional training and without any teaching experience, and if said applicant complies with all the rules and regulations of said board applicable to applicants for a one-year certificate, and if upon investigation said board finds that said applicant is not less than eighteen years of age and is of good moral character and upon such examination in the subjects prescribed by section 7830, G. C., to be taught in any elementary school supported wholly or in part by the state in any village or rural school district, said applicant makes the necessary grades re-



quired by said examining board for the issuance of a one-year certificate, it becomes the duty of said board of school examiners to issue a one-year certificate to such applicant in compliance with the requirements of the statutes governing the issuance of such certificate. Op. Atty. Gen. (1916), p. 561.

SEC. 7823. On and after January 1, 1920, applicants for a one-year or a three-year high school or special certificate shall possess qualifications in professional training of not less than one year of class room instruction in an institution recognized by the state superintendent of public instruction for the training of teachers, provided, however, that teachers who prior to January 1, 1920, have had eight years of successful high school teaching experience or five years of successful experience in supervision shall be eligible to examination and certification as though possessing professional training as required above in this section, and high school training as required in section 7823-1, General Code, and provided further, that in the cases of applicants who have credit for at least two full academic years of work in an institution of learning recognized by the state superintendent of public instruction as being of university or college rank, such credit shall, until January 1, 1924, be accepted in lieu of the required professional training.

Qualifications required for high school certificates.

HISTORY.—R. S. § 4073; 70 v. 195, § 92; 79 v. 88; 81 v. 55; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350; 101 v. 305; 102 v. 49; 104 v. 100 (105); 108 v. Pt. II 1274 (1275).

See Opinions of Attorney General (1919), p. 569, cited under Sec. 7822.

SECTION 7823-1. Applicants for high school and special certificates, except certificates to teach in classes supported with federal aid under the supervision of the state board of education, shall hold certificates of graduation from a first grade high school or the equivalent, in addition to the training required in section 7823, General Code.

Qualifications of applicants for high school and special certificates.

HISTORY.—104 v. 100 (105); 109 v. 190. (The legislature attempted to repeal this section in 108 v. Pt. II 1274, but the repealing clause of the act does not contain the section number.)

See Opinions of Attorney General (1919), p. 569, cited under Sec. 7822.

SECTION 7823-2. Applicants for certificates to teach vocational agriculture, home economics, specific industrial vocational subjects, or other subjects taught in classes supported with federal aid and under the supervision of the state board of education, must possess such qualifications, certified to the board of examiners by the superintendent of public instruction and must pass such examination, as may be determined by the superintendent of public instruction with the approval of the state board of education.

Qualifications and examination of teachers to give vocational instruction.

HISTORY.—108 v. Pt. I 622.

SECTION 7823-3. The amount of training completed by a prospective applicant for a teacher's certificate shall be determined by the superintendent of public instruction after an inspection of the credits held by the prospective

Training determined by superintendent; issue of certificates.

applicant. He shall issue certificates of professional training which shall state the total number of multiples of six-weeks' training completed by the prospective applicant. The superintendent of public instruction shall have power equitably to estimate extension or other credits not regularly earned by full attendance at an institution but which might apply on courses in approved institutions for training teachers and include them in the training which is certified. These certificates issued by the superintendent of public instruction shall be required by boards of examiners as evidence of the training required by law.

HISTORY.—108 v. Pt. I 683 (684).

When certificates may be issued without formal examination.

SECTION 7824. Boards of school examiners at their discretion may issue certificates without formal examinations to holders of certificates granted by other county and city boards of school examiners in Ohio, and, with the approval in each case of the superintendent of public instruction, to holders of certificates granted by certifying authorities in other states. Such certificates may be renewed under regulations provided by the superintendent of public instruction.

HISTORY.—R. S. § 4073; 70 v. 195, § 92; 79 v. 83; 81 v. 55; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350; 108 v. Pt. I 683 (684).

Boards of school examiners at their discretion may issue certificates, without formal examinations, to holders of certificates granted by other county and city boards of school examiners in Ohio.

Boards of school examiners at their discretion may issue certificates, without formal examination, to holders of certificates granted by certifying authorities in other states, only upon the approval in each case of the superintendent of public instruction, who also has authority to make regulations for the renewal of such certificate.

A board of education is not permitted to pay a teacher unless such teacher holds a certificate valid in the jurisdiction where such teaching is performed. Certificates issued by a board of city school examiners are valid in that city school district. Certificates issued by county school examiners are valid in the county school district, including the villages of such county school district. Certificates issued by the superintendent of public instruction are valid in all school districts in the state.

A county board of school examiners may at its discretion recognize the certificates of a city board of school examiners in Ohio and similarly a city board of school examiners may recognize the examinations and certificates of a county board of school examiners in Ohio, and such recognition may be to one or more certain branches. Op. Atty. Gen. (1919), p. 849.

See Opinions of Attorney General as follows:

(1913), p. 1341, cited under Sec. 7816.

(1917), p. 1349, cited under Sec. 7821.

Additional test to written examination. When and by whom made.

SECTION 7825. Every applicant for a teacher's certificate shall be required to take in addition to the written examination, to test academic and professional knowledge, a practical test in actual teaching. Such test shall be made at any time during the preceding year or before the applicant receives his certificate, by a member of the board of examiners, a local supervisor, a teacher of method or any

other competent person authorized by the county board of school examiners to make such test. Applicants without previous teaching experience may be given such class room test in the practice department of any recognized summer school. The test shall include three subjects of instruction unless the applicant desires a special certificate in which case three separate tests shall be given in the desired subject. Each applicant shall make a satisfactory showing in both written and practical tests. The superintendent of public instruction shall prescribe the forms for such examination.

HISTORY.—R. S. § 4073; 70 v. 195, § 92; 79 v. 83; 81 v. 55; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350; 104 v. 100 (105).

See Opinions of Attorney General (1913), p. 1341, cited under Sec. 7816.

SECTION 7826. Between regular examinations boards of examiners under such conditions as may from time to time be prescribed by the superintendent of public instruction may issue temporary certificates which shall be valid only until the next regular examination held by such boards after the issue of such certificate, and at any regular examination such board, upon proper application being made, subject to the same rules and laws as apply to the granting of regular certificates, may issue temporary certificates valid from the date of issue to the first day of September following.

Temporary  
certificates  
may be issued  
when.

HISTORY.—R. S. § 4073; 70 v. 195, § 92; 79 v. 83; 81 v. 55; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350; 102 v. 418; 108 v. Pt. I 683 (684).

See Opinions of Attorney General as follows:

(1919), p. 187, cited under Sec. 7830.

(1919), p. 569, cited under Sec. 7822.

SECTION 7827. No certificate shall be issued to any person who is less than eighteen years of age. If at any time the recipient of a certificate be found intemperate, immoral, incompetent or negligent, the examiners, or any two of them, may revoke the certificate; but such revocation shall not prevent a teacher from receiving pay for services previously rendered. Before any hearing is had by a board of examiners on the question of the revocation of a teacher's certificate, the charges against the teacher must be reduced to writing and placed upon the records of the board. He shall be notified in writing as to the nature of the charges and the time set for the hearing, such notice to be served personally or at his residence; and be entitled to produce witnesses and defend himself. The examining board may send for witnesses and examine them on oath or affirmation which may be administered by any member of the board touching the matter under investigation.

Minimum  
age limit.

HISTORY.—R. S. § 4073; 70 v. 195, § 92; 79 v. 83; 81 v. 55; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350.

The county superintendent and the district superintendent, as members of the county board of school examiners, are each allowed the sum of \$3.00 per day for services performed while conducting investigation required by section 7827 G. C., and the words, "other



expenses of such trial" mean the expenses of the trial other than said per diem fees and expenses of such superintendents. Op. Atty. Gen. (1917), p. 104.

The county board of school examiners have no authority to issue subpoenas and compel attendance of witnesses upon a hearing held pursuant to the provisions of section 7827 G. C.

Witnesses sent for by the county board of school examiners may be allowed and paid such reasonable fees for their attendance upon such hearing as the examiners may determine, not in excess of the witness fees and mileage allowed by law in ordinary cases, under the provisions of section 7828 G. C.

The county board of school examiners may certify to the county auditor for payment the necessary expense of sending for witnesses as authorized by section 7827 G. C., and such necessary expense may be paid pursuant to the provisions of section 7828 G. C.

The county board of school examiners may, under the provisions of section 7827 G. C., revoke a five-year certificate heretofore issued and still in force. Op. Atty. Gen. (1916), p. 1728.

Under existing law the superintendent of public instruction is without authority to consider cases involving the revocation of teachers' certificates, the sole reference to the same occurring in section 7827 G. C., wherein the board of county school examiners is authorized to conduct a hearing upon the question of revocation of the certificate of a person who is "the recipient of a certificate.

Under the provisions of 7847 G. C. the authority given to a board of county school examiners for the revocation of teachers' certificates, as set forth in 7827 G. C., is vested in a city school district in the board of city school examiners. Op. Att. Gen. No. 3225, June 16, 1922.

Fees for examiners conducting investigation.

SECTION 7828. The fees and the per diem of examiners for conducting such investigation at three dollars a day each and other expenses of such trial shall be certified to the county auditor by the clerk and president of the examining board and be paid out of the county treasury upon the order of the auditor.

HISTORY.—R. S. § 4073; 70 v. 195, § 92; 79 v. 83; 81 v. 55; 85 v. 331; 92 v. 121; 93 v. 115; 97 v. 371; 99 v. 350.

See Opinions of Attorney General as follows:

(1916), p. 1728, cited under Sec. 7827.

(1917), p. 404, cited under Sec. 7827.

Kinds of certificates issued by local boards.

SECTION 7829. Three kinds of teachers' certificates only shall be issued by local boards of examiners, which shall be styled respectively "teacher's elementary school certificate" valid to teach all branches in elementary schools including elementary branches in junior high schools and branches provided by authority of section 7648, General Code, and for elementary supervisors; "teacher's high school certificate" valid to teach all branches in recognized high schools and junior high schools and for superintendents, county normal directors and city normal school teachers, not including such assistants as are model school critic teachers or special teachers; and "teacher's special certificate" valid in schools of all grades, but only for the branches of study named therein.

HISTORY.—R. S. § 4074; 71 v. 107; § 93; 79 v. 70; 85 v. 93; 85 v. 331; 92 v. 36; 97 v. 372; 109 v. 190.

See Opinions of Attorney General as follows:

(1917), p. 1349, cited under Sec. 7821.

(1919), p. 947, cited under Sec. 7821.

SECTION 7830. No person shall be employed or enter upon the performance of his duties as teacher in any elementary school supported wholly or in part by the state in any school district who has not obtained from a certificating authority having legal jurisdiction a certificate of good moral character; that he is qualified to teach orthography, reading, writing, arithmetic, English grammar and composition, geography, history of the United States, physiology, including narcotics, literature, and elementary agriculture, and that he possesses an adequate knowledge of the principles of teaching; except as provided in sections 7807-9, 7807-10, 7807-6, 7852 and 7831-I.

Elementary certificate; branches qualified to teach.

HISTORY.—R. S. § 4074; 71 v. 107, § 93; 79 v. 70; 85 v. 93; 85 v. 331; 92 v. 36; 97 v. 372; 102 v. 129; 104 v. 100 (106); 108 v. Pt. I 683 (685).

Under this section a contract for the employment of a person as teacher who has not obtained a teachers' certificate is not invalid if such certificate is obtained before such person enters upon the performance of the duties of his employment: School District v. Dilman, 22 O. S. 194.

If more than one teacher is employed in a school, the employment of one as teacher or superintendent is not rendered invalid by the fact that his certificate does not include all the branches which are taught in such school, but in the absence of evidence showing that he is employed to teach the branches not included in his certificate, it will be presumed that he teaches only the branches included in his certificate: State, ex rel., v. Moser, 12 O. C. 247, 4 O. C. D. 557.

A board of education having made a contract with a person to teach a school in its district, is without authority to pay such person for any time not covered by a proper certificate issued under the requirements demanded in the statutes. Op. Atty. Gen. (1919), p. 1348.

Where a teacher is allowed to teach with the certificate demanded by statute, with and under full knowledge of the board of education, as well as the clerk of the board, the members of the board of education participating in such illegal act, the clerk of such board and the person receiving misappropriated funds under such illegal employment, are liable for any compensation paid from school funds to such person without certificate. Op. Atty. Gen. (1919), p. 187.

See Opinions of Attorney General as follows:

(1917), p. 1349, cited under Sec. 7821.

(1916), p. 561, cited under Sec. 7822.

(1919), p. 187, cited under Sec. 7786.

(1919), p. 947, cited under Sec. 7821.

(1920), p. 888, cited under Sec. 7691.

SECTION 7831. No person shall be employed or enter upon the performance of his duties as a teacher in any recognized high school supported wholly or in part by the state, except as provided for teachers in classes supported with federal aid under the supervision of the state board of education, in any school district or act as superintendent of schools in such district, who has not obtained from a certificating authority having legal jurisdiction a certificate of good moral character and such knowledge of subject matter and ability to teach as may be necessary for the performance of his duties; and no such certificate shall be

High school certificate.

issued by such authority except on the specific conditions provided by the statutes.

HISTORY.—R. S. § 4074; 71 v. 107, § 93; 79 v. 70; 85 v. 93; 85 v. 331; 92 v. 36; 97 v. 372; 102 v. 129; 104 v. 100 (106); 108 v. Pt. I 683 (685).

See Opinions of Attorney General as follows:

(1916), p. 1880, cited under Sec. 7786.

(1919), p. 947, cited under Sec. 7821.

(1919), p. 849, cited under Sec. 7824.

(1920), p. 888, cited under Sec. 7691.

Teacher must have certificate of character and qualifications.

SECTION 7831-1. No person shall be employed or enter upon the performance of his duties as teacher of a class supported with federal aid under the supervision of the state board of education in any school district who has not obtained from a certificating authority having legal jurisdiction a certificate certifying to his good moral character and to the qualifications to teach such class which may be prescribed by the superintendent of public instruction with the approval of the state board of education.

HISTORY.—108 v. Pt. I 622.

Branches in which applicant for high school certificate examined.

SECTION 7831-2. Every applicant for high school certificate by examination shall be examined in English and in the principles of teaching and in addition in five branches selected from the following: literature, general history, modern history, algebra, physics, physiology, Latin, French, Spanish, civics, geometry, physical geography, botany, chemistry, high school agriculture, economics, sociology, manual training, home economics.

HISTORY.—108 v. Pt. I 683 (685).

Teacher's special certificate.

SECTION 7832. No person shall be employed and enter upon the performance of his duties as a special teacher of music, drawing, painting, penmanship, gymnastics, German, French, Spanish, the commercial and industrial branches, or any one of them, in any elementary or high school supported wholly or in part by the state in any city, village, or rural school district, who has not obtained from a board of examiners having legal jurisdiction a certificate of good moral character that he or she is qualified to teach the special branch or branches of study, and, in addition thereto, possesses an adequate knowledge of the theory and practice of teaching.

HISTORY.—R. S. § 4074; 71 v. 107, § 93; 79 v. 70; 85 v. 93; 85 v. 331; 92 v. 36; 97 v. 372; 102 v. 439; 104 v. 100 (106).

See G. C. §§ 7786 and 7849.

See Opinions of Attorney General (1920), p. 888, cited under Sec. 7691.

Teacher's emergency certificate.

SECTION 7832-1. A "teacher's emergency certificate" which shall be valid for one year in any village or rural school district in the county may be granted by the county board of school examiners with the approval of the superintendent of public instruction to applicants who have had one year's experience teaching in the public schools when-



ever for any reason there is a shortage of teachers in such district.

HISTORY.—102 v. 439; 104 v. 100 (106).

See Opinions of Attorney General as follows:

(1919), p. 569, cited under Sec. 7822.

(1919), p. 947, cited under Sec. 7821.

SECTION 7832-2. The county board of school examiners shall grant elementary certificates valid for one year to graduates of first grade high schools or those with equivalent preparation as determined by the superintendent of public instruction, who have completed in addition a one year normal course approved by the superintendent of public instruction. Such certificates may be renewed twice for one year and three times for three years.

To whom one year elementary certificates granted.

HISTORY.—104 v. 100 (107); 108 v. Pt I 683 (685).

See Opinions of Attorney General (1919), p. 569, cited under Sec. 7822.

SECTION 7832-3. The county board of school examiners prior to January 1, 1924, may grant one year elementary certificates to applicants who have completed a one year normal course approved by the superintendent of public instruction, provided, after January 1, 1921, that such applicants have completed two years of high school credit or the equivalent as determined by the superintendent of public instruction. Such certificates may be renewed twice for one year and three times for three years.

To whom one year elementary certificates granted.

HISTORY.—104 v. 100 (107); 108 v. Pt I 683 (685).

See Opinions of Attorney General (1919), p. 569, cited under Sec. 7822.

SECTION 7833. But no person holding a common school life certificate issued by the board of state examiners shall be required to have any other certificate to teach in the elementary schools of the state, nor be required by any board to be examined in any of the branches covered by such certificate in order to be granted the teachers' high school certificate authorized herein.

Recognition of state certificates.

HISTORY.—R. S. § 4074; 71 v. 107, § 93; 79 v. 70; 85 v. 98; 85 v. 331; 92 v. 36; 97 v. 372.

SECTION 7834. Each member of the county board of school examiners, except the clerk thereof shall receive ten dollars for each examination of fifty applicants or less, fourteen dollars for each examination of more than fifty applicants and less than one hundred, eighteen dollars for each examination of one hundred applicants and less than one hundred and fifty, twenty-two dollars for each examination of one hundred and fifty applicants and less than two hundred, and four dollars for each additional fifty applicants, or fraction thereof, to be paid out of the county treasury on the order of the county auditor. Books, blanks and

Compensation of examiners.

stationery required by the board of examiners shall be furnished by the county board of education.

HISTORY.—R. S. § 4075; 70 v. 241, § 95; 83 v. 40; 92 v. 216; 97 v. 373; 99 v. 240; 104 v. 100 (107).

Where an examination for the granting of a teachers' certificate is not held on the date advertised, school examiners who attend such meeting and issue temporary certificates are not entitled to any compensation therefor. Op. Atty. Gen. (1914), p. 642.

Expenses of board.

SECTION 7835. Such board may contract for the use of suitable rooms in which to conduct examinations; may procure fuel and light, and employ janitors, to take charge of the rooms and keep them in order. Expenses so incurred, shall be paid out of the county treasury on orders of the county auditor, who shall issue them upon the certificate of the president of the board, countersigned by the clerk.

HISTORY.—R. S. § 4075; 70 v. 241, § 95; 83 v. 40; 92 v. 216; 97 v. 373; 99 v. 240; 104 v. 100 (107).

See Opinions of Attorney General (1915), p. 727, cited under Sec. 7817.

Annual report of clerk; bond.

SECTION 7836. On or before the first day of September in each year, the clerk of such board shall prepare, and forward to the superintendent of public instruction, a statement of the number of examinations held by the board, the number of applicants examined, the total number of certificates granted, and the number for each term mentioned in this chapter, the amount of fees received and paid to the county treasurer, the amounts received from the county treasury by the members of the board for their services, with such other statistics and information in relation to the duties of the board as such superintendent requires. He shall also deposit with the county auditor a bond, with surety to be approved by the auditor, in the sum of three hundred dollars, that he will pay into the county treasury, monthly, the examination fees received by the board, and make the statistical returns required by this chapter.

HISTORY.—R. S. § 4076; 70 v. 241, § 95; 85 v. 195; 97 v. 373; 104 v. 100 (107).

No additional compensation as clerk.

SECTION 7837. The county superintendent shall receive no additional compensation for his services as clerk of the county board of school examiners.

HISTORY.—R. S. § 4070; 70 v. 241, § 95; 85 v. 195; 92 v. 215; 97 v. 370; 104 v. 100 (108).

A county superintendent of schools may sit as a jurymen in the common pleas court and is entitled to his jury fees in addition to his compensation as such county superintendent. Op. Atty. Gen. (1917), p. 377.

#### CITY BOARD OF EXAMINERS.

City board of school examiners; appointment, term.

SECTION 7838. There shall be a city board of school examiners for each city school district. Such board shall consist of the city superintendent of schools and two other competent teachers serving full time in the day schools of

such city to be appointed by the city board of education. The term of office of such examiners shall be two years each, one to be appointed each year; and shall expire on the thirty-first day of August.

HISTORY.—R. S. § 4077; 70 v. 195, § 97; 71 v. 107, § 96; 85 v. 332; 88 v. 280; 95 v. 456; 97 v. 374; 104 v. 100 (108).

A member of a board of school examiners who accepts such appointment for four consecutive terms, knowing that no provision has been made for compensation, and who has not in any way been prevented from resorting to a writ of mandamus to compel the board to provide compensation, will be regarded, by reason of his failure to institute proceedings in mandamus, as having waived all right to compensation for any period prior to six years before the time that the suit is brought: State, ex rel., v. Board of Education, 4 O. C. C. 97, 2 O. C. D. 441.

A teacher in the city schools who is assigned to the position of director of reference and research in which capacity all the work he does is in connection with the educational department, may continue to serve as a member of the city board of examiners. Op. Atty. Gen. (1917), p. 131.

See Opinions of Attorney General as follows:

No. 2054, (1921), cited under Sec. 4761.

(1919), p. 947, cited under Sec. 7821.

SECTION 7838-1. The board of education of an exempted village school district may by resolution provide for a board of school examiners. Such board shall consist of the superintendent of schools of the district and two other competent teachers serving full time in the day schools of such district, to be appointed by the board of education of the district. The term of office of such examiners shall be two years each, one to be appointed each year; and shall expire on the thirty-first day of August. All sections of the General Code that confer authority upon a city board of examiners shall apply to the board of school examiners for an exempted village school district. Teachers employed in an exempted village school district in which no board of school examiners has been provided for by the board of education shall be examined by the county board of school examiners of the county in which the district is located.

Board of school examiners may be provided in exempted school district; laws applicable.

HISTORY.—109 v. 554.

See Opinions of Attorney General No. 2234, (1921), cited under Sec. 7691.

SECTION 7839. The board of education may revoke any appointment upon satisfactory proof that the appointee is inefficient, intemperate, negligent, or guilty of immoral conduct. When a vacancy occurs in the board, whether from expiration of term of office, refusal to serve, or other cause, the board shall fill it by appointment for the full or unexpired term, as the case demands. Within ten days after an appointment, the clerk of the board shall report to the superintendent of public instruction the name of the appointee, and whether the appointment is for a full or an unexpired term.

Removal and vacancies.

HISTORY.—R. S. § 4077; 70 v. 195, § 97; 71 v. 107, § 96; 85 v. 332; 88 v. 280; 95 v. 456; 97 v. 374; 104 v. 100 (108).



Standard of  
qualification  
prior to and  
after year  
1924.

SECTION 7840. Each city board of school examiners shall prior to the year 1924 determine the standard of qualifications necessary for admission of applicants to examination to receive certificates, excepting applicants for certificates to teach in classes supported with federal aid under the supervision of the state board of education; after January 1, 1924, the qualifications shall be equivalent to and determined in like manner as those prescribed for applicants for county certificates.

HISTORY.—R. S. § 4078; 71 v. 107, § 96; 85 v. 332; 97 v. 374; 108 v. Pt. I 683 (686).

See Opinions of Attorney General (1920), p. 888, cited under Sec. 7691.

Special  
examiners.

SECTION 7841. To secure a thorough examination of applicants in difficult branches, or special studies, the board may secure the temporary assistance of persons of sufficient knowledge in such branches or studies, who must promise on oath or affirmation, to be administered by the clerk of the board of examiners, to perform the duties of examiner faithfully and impartially. Superintendents of schools shall give to the board all necessary information in reference to branches and special studies to be taught, and the branches of study and grades of school which teachers will be required to teach.

HISTORY.—R. S. § 4078; 71 v. 107, § 96; 85 v. 332; 97 v. 374.

See Opinions of Attorney General (1919), p. 947, cited under Sec. 7821.

Organization  
of board;  
duties of  
officers;  
clerk's bond.

SECTION 7842. Each city board of school examiners must organize during the month of September each year by choosing from its members a president, vice-president, and clerk. The president shall preside at all meeting of the board, and in his absence the vice-president shall preside. The clerk shall perform all the duties required in this chapter of the clerk of the board of county school examiners in so far as such duties apply. He also must give bond, in the sum of three hundred dollars with surety to be approved by the board of education, conditioned that he will perform faithfully the duties required of him by this chapter, which bond shall be deposited with the clerk of such board.

HISTORY.—R. S. § 4079; 70 v. 195, § 98; 97 v. 375.

Meetings, for  
examination;  
notice.

SECTION 7843. Each board of city school examiners shall hold not less than two meetings each year, notice of which must be published in some newspaper of general circulation in the district. All examinations of applicants shall be conducted at the meetings of the boards thus called. The examination of every applicant must be in the presence of at least two members of the board.

HISTORY.—R. S. § 4080; 85 v. 332; 97 v. 375.

SECTION 7844. Each city board of school examiners may grant teachers' certificates for one year and three years from the first day of September following examination, which shall be valid within the district wherein they are issued. But certificates granted for one year or three years must be regarded as provisional certificates and shall be renewed only twice each.

Certificates  
for one and  
three years.

HISTORY.—R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352; 104 v. 100 (108).

See Opinions of Attorney General (1919), p. 947, cited under Sec. 7821.

SECTION 7845. All five-year and eight-year certificates now granted shall continue in force until the end of their terms and shall be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully until the time of each renewal. Each application for renewal shall be accompanied by a fee of fifty cents and shall be filed in the office of the superintendent of public instruction.

Certificates  
for five and  
eight years;  
renewals.

HISTORY.—R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352; 104 v. 100 (108).

Under the provisions of section 7845, and 7846, General Code, as amended 104 O. L., 108, the certificates covered by said sections may be renewed more than twice for the reason that there is no limitation in said sections as to the number of times such certificates may be renewed. Op. Atty. Gen. (1914), p. 1295.

See Opinions of Attorney General as follows:

(1919), p. 947, cited under Sec. 7821.

(1920), p. 567, cited under Sec. 7807-3.

SECTION 7846. All two-year and three-year primary, elementary and high school certificates now granted shall continue in force until the end of their terms and may be renewed by the city boards of examiners on proof of five years' successful teaching experience.

Renewal of  
two and  
three year  
certificates.

HISTORY.—R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352; 101 v. 305; 102 v. 49; 104 v. 100.

See Opinions of Attorney General as follows:

(1914), p. 1295, cited under Sec. 7845.

(1919), p. 947, cited under Sec. 7821.

SECTION 7847. All provisions of preceding and following sections pertaining to county school examiners and applicants for county teachers' certificates shall apply also to city examiners and applicants for city teachers' certificates unless there are specific provisions of law applying to the latter.

To whom  
law applies.

HISTORY.—R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352; 104 v. 100 (108); 108 v. Pt. I 683 (686).

See Opinions of Attorney General (1919), p. 849, cited under Sec. 7824.

SECTION 7847-I. City boards of examiners shall provide the questions used in the respective city examinations but may arrange to use questions prepared for county examinations as provided in section 7819, or questions prepared for city examinations under the directions of the

Questions for  
examinations.

superintendent of public instruction for such dates as may be arranged.

HISTORY.—108 v. Pt. I 683 (686).

See Opinions of Attorney General (1919), p. 849, cited under Sec. 7824.

Substitute for practical teaching test.

SECTION 7848. City and county boards of examiners at their discretion may substitute for the practical teaching test provided by section 7825 such an investigation of the teaching of the applicant as they deem best, and any member of the board of examiners may examine any school in the district when such examination is deemed necessary to ascertain a teacher's qualifications.

HISTORY.—108 v. Pt. I 683 (686). This section is not analogous to P. & A. Code § 7848, which was R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352. P. & A. Code § 7848, which was R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352, was repealed in 104 v. 100 (109), § 2.

See Opinions of Attorney General (1919), p. 849, cited under Sec. 7824.

Certificates by city and county boards to teach special classes for deaf, backward, etc.

SECTION 7848-I. City and county boards of examiners may upon proper examination issue certificates valid to teach special classes for the deaf, feeble-minded, backward, and the like, but such applicants must have all necessary and legal qualifications for elementary teachers and in addition such qualifications in such special studies as may be prescribed by the superintendent of public instruction.

HISTORY.—Originally enacted as § 7852-1, 108 v. Pt. I 683 (686), thus having same number as 108 v. Pt. I 514; renumbered § 7852-1a, until reenacted as above in 109 v. 141.

Temporary certificates.

SECTION 7849. Between regular examinations, city boards of school examiners, at their discretion, may issue temporary certificates, which shall be valid only until the next regular examination held by the board after the issue thereof.

HISTORY.—R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352.

Fees and per diem for city examiners.

SECTION 7851. The fees and per diem of city examiners for conducting such investigation as provided in section 7827, General Code, at three dollars a day each, and other expenses of such trial shall be certified to the city auditor by the clerk and president of the examining board, and be paid out of the city treasury upon the order of the city auditor.

HISTORY.—R. S. § 4081; 70 v. 195, § 100; 72 v. 114, § 99; 77 v. 6; 78 v. 87; 85 v. 333; 97 v. 375; 99 v. 352; 109 v. 190.

Discretion of city boards in branches.

SECTION 7852. City boards of examiners at their discretion may require teachers in elementary schools to be examined in drawing, music or physical training if such subjects are a part of the regular work of such teachers; they may also at their discretion relieve applicants for ele-



mentary certificates from examination in agriculture or substitute general science or nature study therefor.

HISTORY.—R. S. § 4082; 71 v. 107, § 96; 97 v. 376; 108 v. Pt. I 514; 108 v. Pt. I 683 (686).

See Opinions of Attorney General as follows:

(1919), p. 947, cited under Sec. 7821.

(1919), p. 849, cited under Sec. 7824.

SECTION 7852-1. Any person now holding a certificate and before a certificate is granted to any applicant to teach in any of the public schools of this state, such applicant or teachers shall subscribe to the following oath or affirmation:

Oath of teachers; form; where filed.

"I solemnly swear, or affirm, that I will support the constitution of the United States, the constitution of the state of Ohio, and the laws enacted thereunder, and that I will teach, by precept and example, respect for the flag, reverence for law and order and undivided allegiance to the government of one country, the United States of America."

Said oath or affirmation, duly signed, shall be filed in the office of the examiner issuing such certificate and a copy shall be given the applicant making such oath or affirmation.

HISTORY.—108 v. Pt. I 514. The same General Code section number (§ 7852-1) was given by the legislature to 108 v. Pt. I 514 and to 108 v. Pt. I 683 (686). Therefore 108 v. Pt. I 683 (686) was renumbered (§ 7852-1a), until reenacted as § 7848-1.

See Opinions of Attorney General (1919), p. 849, cited under Sec. 7824.

SECTION 7852-2. Every teacher in a private or parochial school or in any academy, college, university or other institution of learning in this state, shall, before entering upon the discharge of his duties, take the same oath or affirmation of allegiance as that prescribed for public school teachers in section 7852-1. Such oath or affirmation shall be so taken and subscribed in writing before some officer authorized by the state to administer oaths, a copy of which writing shall be filed with the officer or board of authority in charge or control of such private or parochial school or such academy, college, university or other institution of learning.

Teachers in private or parochial school shall take oath.

HISTORY.—108 v. Pt. I 514 (515).

SECTION 7852-3. Whoever being in control of any public, private or parochial school, of any academy, college, university or other institution of learning, shall allow or permit any teacher to enter upon the discharge of his duties or to give instruction therein unless such teacher shall have taken and subscribed the oath or affirmation of allegiance as provided for in sections 7852-1 and 7852-2, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars.

Penalty for permitting teachers to enter upon duties without taking oath.

HISTORY.—108 v. Pt. I 514 (515).

Compensation  
of members  
and clerk;  
incidental  
expenses.

SECTION 7853. Each city board of education shall fix the compensation of the members of the city board of school examiners, the additional compensation of the clerk, and the person or persons called to their assistance, furnish the necessary books, blanks and stationery for their use, designate a school building within the district in which they shall conduct examinations and cause such building to be lighted and heated if necessary. Such compensation, and the incidental expenses incurred on account of the board of examiners, shall be paid, by order of the board of education, from the contingent fund of the district.

HISTORY.—R. S. § 4083; 70 v. 195, § 98; 85 v. 196; 97 v. 376.

If a board of education has failed to comply substantially with an order of mandamus requiring it to fix the compensation for the board of examiners; and, under a misapprehension as to the facts, it has fixed a compensation which is merely nominal and entirely inadequate, the court will on proper application require the board of education to reconsider its finding upon the basis of the facts as found to exist, and it will require a genuine and bona fide attempt to comply with such order: State, ex rel., v. Board of Education, 4 O. C. C. 93, 2 O. C. D. 438.

See under Sec. 7838.

A member of a board of examiners is not an officer within the meaning of Art. II, § 20, of the Ohio constitution, which forbids a change in the compensation of officers during their term of office; and a board of education may change the compensation of examiners during their term of office, although such change cannot be made retroactive: State, ex rel., v. Board of Education, 21 O. C. C. 785, 12 O. C. D. 333.

Duties of  
clerk of city  
board of  
school ex-  
aminers.

SECTION 7854. The clerk of the city board of school examiners shall keep a record of its proceedings, and such statistics as the superintendent of public instruction requires, in the form and manner he requires, and report such statistics to him annually, on or before the first day of September.

HISTORY.—R. S. § 4084; 70 v. 195, § 101; 72 v. 114, § 99; 78 v. 87; 83 v. 35; 85 v. 30; 97 v. 376; 104 v. 100 (108).

Disposition of  
examination  
fees.

SECTION 7855. Such clerk shall pay the examination fees received by him to the treasurer of the district within ten days after each meeting, and at the same time file with the board of education a written statement of the amount, also a statement of the number of applicants, male and female, examined, the number of certificates granted, and for what terms.

HISTORY.—R. S. § 4084; 70 v. 195, § 101; 72 v. 114, § 99; 78 v. 87; 83 v. 35; 85 v. 30; 97 v. 376; 104 v. 100 (108).

See Opinions of Attorney General (1914), p. 1062, cited under Sec. 7865.

Consideration  
of applicants'  
answers; issue  
of certificates  
or notice of  
failure.

SECTION 7856. All manuscripts filed as answers to questions propounded to any applicant appearing before any county or city board of school examiners, shall be promptly considered and passed upon by that board together with the results of oral tests, if any, and such other information as comes to it touching the fitness of any applicant for teaching in the public schools. The board shall promptly issue

all certificates granted to successful applicants and send notices of failure to those who fail in the examination, if such there be.

HISTORY.—R. S. § 4085; 97 v. 377.

SECTION 7857. All manuscripts filed as answers to questions shall be kept on file for sixty days by the members of the examining board. If any applicant has cause to and does believe that he has been discriminated against and his manuscripts unfairly graded, he may review his manuscripts with the member or members of the board having them in charge at any time within sixty days after his returns from the examination. If after such inspection and review, he is still of the opinion that the board will not correct the error, if any, and issue his certificate, he may appeal his case to the superintendent of public instruction for final review.

Manuscripts shall be kept on file 60 days; review.

HISTORY.—R. S. § 4085; 97 v. 377; 104 v. 100 (109).

SECTION 7858. Every appeal from the board of examiners shall be in the form of an affidavit setting forth the facts as the applicant believes them and shall be accompanied by a fee of one dollar to cover the expenses incident to such appeal. Upon receipt of such affidavit and fee the superintendent of public instruction shall require the clerk of such board to procure and forward the manuscripts of such applicant, together with a full explanation of the reasons for the board's action. If upon examination of the manuscripts, and record the superintendent finds that the applicant was denied a certificate when one should have been granted him and has been discriminated against by the board, the superintendent shall order forthwith a certificate to be issued of the date of the examination attended by the applicant, and he shall indicate the length of time such certificate shall be valid. If, upon inspection of the manuscript and reviewing the facts submitted, the superintendent of public instruction concludes that no injustice has been done, he shall so notify the applicant and the clerk of the board of examiners.

How appeal may be taken; result.

HISTORY.—R. S. § 4085; 97 v. 377; 104 v. 100 (109).

See Opinions of Attorney General (1917), p. 2432, cited under Sec. 7891.



## CHAPTER 24

### COUNTY AND CITY TEACHERS' INSTITUTES

#### SECTION.

7859. Organization of county teachers' institutes.
7860. Election of officers; notice, expense.
7865. Report by county superintendent.
7868. County boards of education shall determine whether institute shall be held.
- 7868-1. When boards of education shall pay teacher who attended summer school.
7869. Teachers may dismiss school to attend institute.

#### SECTION.

7870. Teachers and superintendent to receive regular pay while attending institute.
- 7870-1. Special provision for payment of teachers attending institute during year 1914.
7871. Institute for city districts.
7872. Expenses of, how provided for.
7873. When fund in city district to be paid into board of education fund.
7874. Length of session; report to superintendent.

Organization  
of county  
teachers'  
institutes.

SECTION 7859. A teachers' institute may be organized in any county, by the association of not less than thirty practical teachers of the common schools residing therein, who must declare their intention in writing to attend such institute, the purpose of which shall be the improvement of such teachers in their profession.

HISTORY.—R. S. § 4086; 70 v. 195, § 112; 84 v. 230; 92 v. 10; 95 v. 237.

County boards of education are unauthorized to pay the expenses of teachers' meetings other than the annual teachers' institute which must be held during one certain week.

The grant of power in section 7872 G. C. that "the board of education of any district" may expend for instruction of teachers any sum not to exceed \$500, is limited to city districts only.

Monies illegally paid out by a county board of education can be recovered from the members voting such expenditure or from the persons receiving the same. Op. Atty. Gen. (1919), p. 464.

Election of  
officers; notice,  
expense.

SECTION 7860. The county teachers' institute, annually, shall elect by ballot, a president and a secretary. Such election of officers shall be held during the session of such institute and at a time fixed by the county board of education. At least three days' notice of the election shall be given the members of such institute by posting conspicuously in the room, where the institute is held, a notice of the time and place of holding it, and of the officers to be voted for. The expenses of conducting such institute shall be paid out of the county board of education fund upon the order of the president of the county board of education.

HISTORY.—R. S. § 4086; 70 v. 195, § 112; 84 v. 230; 92 v. 10; 95 v. 237; 104 v. 155 (156).

Under 4747-3A the county board of education can pay the actual necessary expense of the annual educational meeting of the members of the boards of education in the county school unit, provided for in section 4747-1 G. C. Such expense may include printing, sending notice to members, and rental of place for meeting if such rental is absolutely necessary.

Under 4747-1 as amended in 108 O. L. 704 and effective after September, 1919, members of village and rural boards of education who attend the annual educational meeting may be paid \$2.00 by their local board for such attendance, upon filing proper certificate with his local board. Op. Atty. Gen. (1919), p. 866.

SECTION 7865. Within five days after the adjournment of the institute, the county superintendent shall report to the superintendent of public instruction the number of teachers in attendance, the names of instructors and lecturers attending, the amount of money received and disbursed by the county board of education and such other information relating to the institute as the superintendent of public instruction requires.

Report by county superintendent.

HISTORY.—R. S. § 4088; 70 v. 195, § 112; 85 v. 196; 95 v. 238; 104 v. 155 (157).

SECTION 7868. The teachers' institutes of each county shall be under the supervision of the county boards of education. Such boards shall decide by formal resolution at any regular or special meeting held prior to February 1st of each year whether a county institute shall be held in the county during the current year.

County boards of education shall determine whether institute shall be held.

HISTORY.—R. S. § 4090; 70 v. 195, § 114; 104 v. 155 (157).

See Opinions of Attorney General (1917), p. 912, cited under Sec. 7869.

SECTION 7868-I. Each village and rural boards of education in counties in which no county institute has been held in any year, shall pay ten dollars to each teacher employed by such board, who has attended for at least six weeks during such year, a recognized summer school for the training of teachers.

When boards of education shall pay teacher who attended summer school.

HISTORY.—104 v. 155 (157).

The recognized summer school for the training of teachers, mentioned in section 7868-1 G. C., can be located either in or outside of Ohio, but such summer school for teachers must be one that has been officially recognized as such by the superintendent of public instruction.

Boards of education may pay for institute attendance that takes place in another county in this state, but such attendance must be certified by a county superintendent in Ohio. Op. Atty. Gen. (1919), p. 810.

SECTION 7869. All teachers and superintendents of the public schools within any county in which a county institute is held while the schools are in session may dismiss their schools for the purpose of attending such institute.

Teachers may dismiss school to attend institute.

The county boards of education shall decide the length of time county institutes may remain in session, in no case for longer period than five days. At least one day of such session shall be under the immediate direction of the county superintendent who shall arrange the program for such day.

Time institutes may remain in session.

HISTORY.—R. S. § 4091; 70 v. 195, § 117; 97 v. 377; 99 v. 451; 104 v. 155 (157).

The county board of education is authorized to order but one institute held in the county during any one year and such institute

must be held during some one certain week. If other institutes are held the expense thereof cannot be paid from the county board of education fund. Op. Atty. Gen. (1917), p. 912.

Pay for attending institute.

SECTION 7870. When a teachers' institute has been authorized by the county board of education the boards of education of all school districts shall pay the teachers and superintendents of their respective districts their regular salary for the week they attend the institute upon the teachers or superintendents presenting certificates of full regular daily attendance, signed by the county superintendent. If the institute is held when the public schools are not in session, such teachers or superintendents shall be paid two dollars a day for actual daily attendance as certified by the county superintendent, for not more than five days of actual attendance, to be paid as an addition to the first month's salary after the institute, by the board of education by which such teacher or superintendent is then employed. In case he or she is unemployed at the time of the institute, such salary shall be paid by the board next employing such teacher or superintendent, if the term of employment begins within three months after the institute closes.

HISTORY.—R. S. § 4091; 70 v. 195, § 117; 97 v. 377; 99 v. 451; 104 v. 155 (157).

County and district superintendents are not entitled to pay for attending the county teachers' institute. Op. Atty. Gen. (1919), p. 1409.

Where a board of education has employed teachers for the public schools of the district for the school year next ensuing thereafter, and such teachers, during vacation and after their employment, attend the county institute during the week it is held in the same county, said board is authorized by the provisions of this section, to pay them for the institute week as an addition to their first month's salary as fixed by the terms of their employment, and at the same rate, on presentation of the certificates prescribed by this section: *Beverstock v. Board of Education*, 75 O. S. 144 [affirming *Beverstock v. Board of Education*, 7 O. C. C. (N. S.) 373, 18 O. C. D. 1871].

In a contract between the board of education and a teacher, under which the teacher was to teach an eight months' term of school at forty-five dollars per month, was included a stipulation that such teacher would not exact, demand or accept pay for attending the teachers' institute. It was held that such stipulation is against public policy and void, and in an action for the purpose the teacher can recover the sum fixed by statute for such attendance: *Board of Education v. Burton*, 11 O. C. C. (N. S.) 103, 20 O. C. D. 411 [affirming *Burton v. Board of Education*, 5 O. N. P. (N. S.) 294, 18 O. D. (N. P.) 671].

A teacher in the public schools may recover compensation for attending the teachers' institute, although it is held in the summer vacation, if such teacher was actually engaged in teaching or began teaching three months after such institute closed: *Reid v. Board of Education*, 6 O. N. P. (N. S.) 526, 16 O. D. (N. P.) 414.

Where a teacher attends the institute during the vacation period, or when the schools are not in session, and receives a certificate of attendance from the county superintendent for not more than five days of actual attendance, and begins to teach within three months after the institute, but teaches for only two weeks and then joins the United States army, the institute fees are payable as an addition to that part of the first month's salary received by such teacher.



A district superintendent is not entitled to pay for attending a teachers' institute under authority of section 7870 G. C., as amended in 104 O. L., 157. Op. Atty. Gen. (1915), p. 1571.

See Opinions of Attorney General as follows:

(1914), p. 1062, cited under Sec. 7865.

(1917), p. 729, cited under Sec. 7871.

(1917), p. 912, cited under Sec. 7869.

[SECTION 7870-I.] The boards of education of all school districts are hereby authorized to pay teachers who attended the county teachers' institutes during the year 1914 such amounts and in such manner as provided in section 7870 of the General Code prior to its amendment of February 17, 1914, or as amended February 17, 1914.

Payment of teachers who attended institutes.

All payments heretofore made by boards of education to teachers for such attendance at teachers' institute during the year 1914 are hereby declared to be legal and valid and all boards and officers making such payments are hereby relieved from any liability therefor.

HISTORY.—106 v. 558, § 1.

SECTION 7871. The board of education of each city school district may provide for holding an institute yearly for the improvement of the teachers of the common schools therein. General meetings of the teachers of a city district held upon not less than four days in any year, whether consecutive days or not, for the purposes of instruction, shall constitute a teachers' institute for a city district within the meaning of this section.

Institutes for city districts.

HISTORY.—R. S. § 4092; 70 v. 195, § 118; 90 v. 131; 97 v. 378.

There is no provision of law for the payment of teachers who attend teachers' meetings which are called as provided by G. C., sections 7706-1 and 7871. Op. Atty. Gen. (1917), p. 729.

See Opinions of Attorney General (1914), p. 1062, cited under Sec. 7865.

SECTION 7872. The expenses of such institute shall be paid from the city institute fund hereinbefore provided for. In addition to this fund the board of education of any district annually may expend for the instruction of the teachers thereof, in an institute or in such other manner as it prescribes, a sum not to exceed five hundred dollars, to be paid from its contingent fund.

Expenses of, how provided for.

HISTORY.—R. S. § 4092; 70 v. 195, § 118; 90 v. 131; 97 v. 378.

The expenses of a teacher, appointed by the board of education as delegate to the educational congress at Columbus, December 5, 1913, may not legally be paid out of the township, village, or special school district treasury.

When a teacher is appointed by a board of education of a city district, such expense may not be paid from the school treasury, nor can the expenses of members of a board of education to such convention be paid out of the city fund. The expenses of persons not members of a board of education or teachers, incurred in attending the above named congress, may not be paid from the school fund. Before such expenses can be paid, an appropriation for this purpose must be made by the legislature. Op. Atty. Gen. (1913), p. 416.

See Opinions of Attorney General (1914), p. 1062, cited under Sec. 7865.

When fund in city district to be paid into board of education fund.

SECTION 7873: If the board of a district does not provide for such institute in any year, it shall cause the institute fund in the hands of the district treasurer for the year to be paid to the treasurer of the county wherein the district is situated, who shall place it to the credit of the the county board of education fund. The teachers of the schools of such district in such case, shall be entitled to the advantages of the county institute, subject to the provisions of sections seventy-eight hundred and sixty-nine, and seventy-eight hundred and seventy. The clerk of the board shall make the report of the institute required by section 7874.

HISTORY.—R. S. § 4092; 70 v. 195, § 118; 90 v. 131; 97 v. 378; 104 v. 155 (158).

See Opinions of Attorney General (1914), p. 1062, cited under Sec. 7865.

Length of session; report to superintendent.

SECTION 7874. All institutes held under the provisions of this chapter shall continue at least four days. A report of the institute held in pursuance of the provisions of sections seventy-eight hundred and seventy-one and seventy-eight hundred and seventy-two shall be made to the superintendent of public instruction within five days after the adjournment thereof. It must state the number of teachers in attendance, the names of the instructors and lecturers, the total expense of the institute, the portion thereof paid from the institute funds, and such other information relating to the institute as the superintendent requires.

HISTORY.—R. S. § 4094; 70 v. 195, §§ 113, 115, 118; 85 v. 196; 97 v. 378; 104 v. 225 (236).

## CHAPTER 25

### TEACHERS' PENSIONS

(All of this refers to the local systems which have been almost entirely superseded by the state system of Chapter 26)

#### SECTION.

7875.	Trustees of school-teachers' pension fund.
7876.	Election of board of trustees.
7877.	Provision for creation of school-teachers' pension fund.
7878.	Donations, bequests, etc.
7879.	Investment of funds; payment of pensions.
7880.	Retirement of teachers by board of education.
7881.	Meaning of term "teacher".
7882.	Voluntary retirement.
7883.	Pension: \$12.50 for each year's service.
7884.	Who not entitled to pension.
7885.	How, when fund insufficient to pay pensions.

#### SECTION.

7886.	Use of principal and income of pension fund.
7887.	Pension exempt.
7888.	Monthly certifications of deductions from salaries.
7889.	Who custodian of fund.
7890.	Duties.
7891.	Provisions for refunding.
7892.	Heirs, legatees or assigns of deceased teacher entitled to half amount paid.
7893.	Rules and regulations.
7894.	Monthly payments to be made by board of education.
7895.	Payments from contingent fund.
7896.	Transfer of existing funds.

SECTION 7875. When the board of education of a school district by resolution, adopted by a majority vote of the members thereof, declares that it is advisable to create a school-teachers' pension fund for that school district, such fund shall be under the management and control of a board to be known as "the board of trustees of the school-teachers' pension fund" for such district. Such board shall be composed of not less than three, nor more than seven members, as the board of education by resolution declares. If composed of less than five a member of the board of trustees of such pension fund shall be elected by the board of education of such school district; and the remaining members by the teachers of the public schools, including the teachers of any high schools, of such district, who have accepted the provisions hereinafter provided. If such board is to be composed of five or more members, two members of the board of trustees of such school district shall be elected by the board of education thereof, and the remaining members by the teachers of the public schools, including the teachers of any high schools of such school district, who have accepted such provisions.

Trustees of school teachers' pension fund.

HISTORY.—R. S. § 3897b; 92 v. 149; 94 v. 306; 95 v. 610.

No provisions of the act creating local district pension systems for teachers (sections 7875 to 7896 inclusive) have been repealed by the statutes creating a new state wide teachers' retirement system, but the existence and rights of established local district pension systems for teachers are recognized in section 7896-23 of the new state wide teachers' retirement system act.

Where a teacher begins her first service after September 1, 1920, as a teacher, in a city still maintaining a local district pension system, under the provisions of section 7877 such teacher must become a member of the local teachers' pension system in the district.



Where a teacher, who on or about September 1, 1920, becomes a member of the state teachers' retirement system, and who afterward, while still a member of such state system, becomes a teacher in a city school district maintaining a local district pension system that did not merge with the state retirement system, such teacher loses her status as a member of the state retirement system and becomes a member of the local city district retirement system under the provisions of section 7877 G. C., which is still in force; and such teacher is entitled to withdraw her accumulated contributions from the teachers' saving fund of the state retirement system (section 7896-25, 7896-40 and 7896-56 G. C.). The law does not contemplate that a teacher can be a member of two teachers' retirement systems in this state, nor can boards of education be required to contribute to the state retirement system at the same time for one and the same teacher.

Teachers employed in a school district which maintains a local teachers' pension system are eligible to membership in the state teachers' retirement system, provided that such teachers are those who are not affiliated as members of such local teachers' pension system, having exercised the privilege extended to them by the provisions of section 7877 G. C.

Where a teacher who is a member of the state teachers' retirement system thereafter joins a local district teachers' retirement system, such teacher losing her membership in the said teachers' retirement system makes void her prior service certificate and the same is not renewable as provided in section 7896-32 G. C. Such teacher, to again become a member of the state retirement system, must come in as a new entrant, or as a member of a local district pension system, where such local district pension system has later merged with the state retirement system, as provided by section 7896-23. Op. Atty. Gen. (1920), p. 584.

There is no provision in the act providing for the creation of local district pension systems for teachers (7875 to 7896 G. C.) for the reinstatement of a beneficiary or pensioner as an active teacher in that district. Op. Atty. Gen. No. 2754, Dec. 31, 1921.

See Opinions of Attorney General (1917), p. 785, cited under Sec. 7882.

Election of  
board of  
trustees.

SECTION 7876. The election of the members of such board by the teachers shall be at a meeting called by the superintendent of schools of such school district, the first election to be at a meeting to be called by the superintendent when one-third of the public school teachers of such school district have accepted the provisions of this chapter. Members of the board of trustees of such pension fund shall be elected for such length of time as the board of education of the school district by resolution declares, to serve not less than one, nor more than three years. They shall serve until their successors are elected and qualified, and without compensation.

HISTORY.—R. S. § 3897b; 92 v. 149; 94 v. 306; 95 v. 610.

Provision for  
creation of  
school-teach-  
ers' pension  
fund.

SECTION 7877. When the board of education of any school district has declared the advisability of creating a school-teachers' pension fund, its clerk shall notify each teacher in the public schools and high schools, if any, of the school district, by notice in writing of the passage of such resolution, and require the teachers to notify the board in writing within thirty days from the date of such notice whether they consent or decline to accept the provisions of law for creating such a fund; but teachers who, prior to

the first day of July, 1911, were in the employ of a board of education which has created such a fund under this law shall not be denied the right of accepting the provisions hereof before the first day of January, 1912. After the election of the board of trustees herein provided for, two dollars (\$2.00) shall be deducted by the proper officers from the monthly salary of each teacher who accepted such provisions, and from the salary of all new teachers such sum to be paid into and applied to the credit of such pension fund; and such sum shall continue so to be deducted during the term of service of such teacher.

All persons employed for the first time as teachers by a board of education which has created such a pension fund shall be deemed new teachers for the purpose of this act, but the term new teachers shall not be construed to include teachers serving under reappointments. New teachers shall by accepting employment as such accept the provisions of this act and thereupon become contributors to said pension fund in accordance with the terms hereof. And the provisions of this act shall become a part of and enter into such contract of employment.

HISTORY.—R. S. § 3897c; 92 v. 152; 95 v. 610; 102 v. 445.

A person who is employed as a teacher but is designated as an "assistant" comes within the term teacher as that term is commonly used by our school laws. Op. Atty. Gen. (1918), p. 85.

See Opinions of Attorney General as follows:

(1914), p. 496, cited under Sec. 7880.  
(1915), p. 1117, cited under Sec. 7880.

SECTION 7878. All moneys received from donation, legacies, gifts, bequests, or from any other source, shall also be paid into such fund, or into a permanent fund. If paid into a permanent fund, only the interest thereof shall be applied to the payment of pensions.

Donations, bequests, etc.

HISTORY.—R. S. § 3897c; 92 v. 152; 95 v. 610; 102 v. 445.

One who has paid in money to a pension fund, created under unconstitutional legislation, will be restored to his former position by a court of equity: *Venable v. Schafer*, 7 O. C. C. (N. S.) 337, 18 O. C. D. 202.

SECTION 7879. Such board of trustees may invest such pension fund in the name of the board in bonds of the United States, or of the state of Ohio, or of any county, or municipal corporation, or school district in this state; and may make payments from such fund for pensions granted in pursuance of the laws relating thereto. The board of trustees from time to time also may make and establish such rules and regulations for the administration of the fund as they deem best.

Investment of funds; payment of pensions.

HISTORY.—R. S. § 3897c; 92 v. 152; 95 v. 610.

SECTION 7880. Such board of education of such school district, and a union, or other separate board, if any, having the control and management of the high schools of such district, may each by a majority vote of all the members com-

Retirement by board.

posing the board on account of physical or mental disability, retire any teacher under such board who has taught for a period aggregating twenty years. One-half of such period of service must have been rendered by such beneficiary in the public schools or high schools of such school district, or in the public schools or high schools of the county in which they are located, and the remaining one-half in the public schools of this state or elsewhere.

HISTORY.—R. S. § 3897d; 92 v. 153; 94 v. 307; 95 v. 611; 98 v. 157; 101 v. 306.

The provisions of section 7892 G. C., are not applicable to the case of a person who has been retired as a teacher by the board of education of a school district under authority of section 7880 G. C., and who has been granted a pension by said board of education under authority of section 7883 G. C. Op. Atty. Gen. (1915), p. 1117.

If a teacher is forced to retire by virtue of the provisions contained in section 7880, General Code, and comes within the provision of said section as to the length of time such teacher has taught, then such teacher can teach in other public schools of the state, and continue to draw her pension. The same rule applies when a teacher voluntarily retires.

If a teacher requests to be retired under section 7880, General Code, and after drawing one month's pension, she may marry and still continue to draw her pension the remainder of her natural life. Op. Atty. Gen. (1914), p. 496.

See Opinions of Attorney General as follows:

(1916), p. 1657, cited under Sec. 7882.

(1916), p. 789, cited under Sec. 7881.

(1917), p. 785, cited under Sec. 7882.

(1917), p. 2432, cited under Sec. 7891.

Meaning  
of term  
"teacher."

SECTION 7881. The term "teacher", in this chapter, shall include all teachers regularly employed by either of such boards in the day schools, including the superintendent of schools, all superintendents of instruction, principals, and special teachers, but in estimating years of service, only service in public day schools or day high schools, supported in whole or in part by public taxation, shall be considered.

HISTORY.—R. S. § 3897d; 92 v. 153; 94 v. 307; 95 v. 611; 98 v. 157.

The term "teacher" as found in the chapter relating to teachers' pensions and as defined by section 7881 G. C., does not include a person who, prior to the time of the establishment of a teachers' pension fund by the board of education as a teacher in the schools of said district, but whose employment was terminated before any steps were taken by said board to establish said fund. Op. Atty. Gen. (1916), p. 789.

See Opinions of Attorney General as follows:

(1917), p. 131, cited under Sec. 7838.

(1914), p. 617, cited under Sec. 7883.

(1918), p. 85, cited under Sec. 7877.

(1917), p. 785, cited under Sec. 7882.

(1915), p. 1117, cited under Sec. 7880.

(1917), p. 2432, cited under Sec. 7891.

Voluntary re-  
irement.

SECTION 7882. Any teacher may retire and become a beneficiary under this chapter who has taught for a period aggregating thirty years. But one-half of such term of service must have been rendered in the public schools or in



the high schools of such school district, or in the public schools or high schools of the county in which the district is located, and the remaining one-half in the public schools of this state or elsewhere.

HISTORY.—R. S. § 3897d; 92 v. 153; 94 v. 307; 95 v. 611; 98 v. 157; 101 v. 306.

Where a teacher who retires pursuant to the provisions of section 7882 G. C., is eligible to a pension as provided by section 7883 G. C., the right of such teacher to such pension is not defeated or affected by his or her subsequent employment in a college or academy not supported in any way by the state. Op. Atty. Gen. (1916), p. 1657.

Under the provisions of sections 7875 et seq. G. C., a teacher is entitled to a pension providing she has taught for a period aggregating twenty years under the conditions set out in section 7882 G. C., and provided further that the board does not re-employ her, she being willing to continue in the employ of the board. Op. Atty. Gen. (1917), p. 785.

See Opinions of Attorney General as follows:

- (1914), p. 617, cited under Sec. 7883.
- (1915), p. 1117, cited under Sec. 7880.
- (1916), p. 789, cited under Sec. 7881.
- (1914), p. 496, cited under Sec. 7880.
- (1917), p. 2432, cited under Sec. 7891.

SECTION 7883. Each teacher so retired or retiring shall be entitled during the remainder of his or her natural life to receive as pension, annually, twelve dollars and fifty cents for each year of service as teacher, except that in no event shall the pension paid to a teacher exceed four hundred and fifty dollars in any one year. Such pensions shall be paid monthly during the school year.

Pension;  
\$12.50 for  
each year's  
service.

HISTORY.—R. S. § 3897d; 92 v. 153; 94 v. 307; 95 v. 611; 98 v. 157; 101 v. 306.

In order to be entitled to a pension, a teacher must have served thirty years of actual teaching, and a leave of absence granted to such teacher cannot be counted as service for fixing the amount of pension paid to such teacher under the provisions of section 7883, General Code, whether the same be granted because of ill health or not. Op. Atty. Gen. (1914), p. 617.

See Opinions of Attorney General as follows:

- (1916), p. 1657, cited under Sec. 7882.
- (1917), p. 2432, cited under Sec. 7891.
- (1915), p. 1117, cited under Sec. 7880.
- (1914), p. 496, cited under Sec. 7880.

SECTION 7884. No such pension shall be paid until the teacher contributes, or has contributed, to such fund a sum equal to twenty dollars a year for each year of service rendered as teacher, but which sum shall not exceed six hundred dollars. Should any teacher retiring be unable to pay the full amount of this sum before receiving a pension, in paying the annual pension to such retiring teacher, the board of trustees must withhold on each month's payment twenty per cent. thereof, until the amount above provided has been thus contributed to the fund.

Who not  
entitled to  
pension.

HISTORY.—R. S. § 3897d; 92 v. 153; 94 v. 307; 95 v. 611; 98 v. 157.

See Opinions of Attorney General as follows:

- (1917), p. 2432, cited under Sec. 7891.
- (1915), p. 1117, cited under Sec. 7880.

How, when  
fund in-  
sufficient to  
pay pensions.

SECTION 7885. If such pension fund at any time be insufficient to meet the pensions so provided for, during the period it is insufficient to make such payment, the amount in such fund shall be prorated between the parties entitled thereto.

HISTORY.—R. S. § 3897d; 92 v. 153; 94 v. 307; 95 v. 611; 98 v. 157.

Use of prin-  
cipal and in-  
come.

SECTION 7886. Such board of trustees may use both the principal and income of such fund for the payment of the premiums herein provided for, and the expense thereof, but this shall not apply to the principal of moneys received from donations, legacies, gifts, bequests, or other such sources.

HISTORY.—R. S. § 3897e; 92 v. 154; 95 v. 612; 98 v. 158.

Pension ex-  
empt.

SECTION 7887. Before its distribution and payment by the board of trustees to the beneficiaries, no part of such pension fund shall be liable to be taken or subjected by any writ or legal process against the beneficiary.

HISTORY.—R. S. § 3897e; 92 v. 154; 95 v. 612; 98 v. 158.

Monthly cer-  
tifications of  
deductions  
from salaries.

SECTION 7888. The clerk of the board of education of such school district, and the clerk of the union board of high schools, or other separate board having the control and management of the high schools of the district, if any, each shall certify monthly to such board of trustees all amounts deducted from the salaries of the teachers as above provided, which amounts, as well as all other moneys contributed to such fund, must be set apart as a special fund for the purposes herein specified, subject to the order of the board of trustees. Moneys belonging to such fund shall be paid only on the order of such board, entered upon its minutes on warrants signed by its president and secretary.

HISTORY.—R. S. § 3897f; 92 v. 154; 95 v. 612.

Who custodian  
of fund.

SECTION 7889. The treasurer of such school district shall be the custodian of such pension fund, and keep it subject to the order, control and direction of the board of trustees. He must keep books of accounts concerning the fund in such manner as may be prescribed by such board which always shall be subject to the inspection of the board of trustees or of any member thereof. Such treasurer shall execute a bond to the board of trustees with good and sufficient sureties in such sum as the board requires, which bond shall be subject to its approval, and be conditioned for the faithful performance of his duties as custodian and treasurer of the board.

HISTORY.—R. S. § 3897g; 92 v. 154; 95 v. 612.

Duties.

SECTION 7890. Such treasurer must keep and truly account for all moneys and profits coming into his hands, belonging to such fund, and at the expiration of his term of office pay over, surrender and deliver to his successor all securities, moneys and other property of whatsoever kind,

nature and description in his hands or under his control as treasurer. For his services he shall be paid not to exceed one per cent. annually of the amount paid into the fund during the year.

HISTORY.—R. S. § 3897g; 92 v. 154; 95 v. 612.

SECTION 7891. A teacher who resigns, upon application within three (3) months after such resignation takes effect, shall be entitled to receive one-half of the total amount paid by such teacher into such fund. If at any time a teacher who is willing to continue in the service of the board of education is not reemployed or is discharged before his term of service aggregates twenty years, then to such teacher shall be paid back at once all the money he or she may have contributed under this law. But if any teacher who has taught for a period aggregating twenty years is not re-employed by the board of education, such failure to re-employ shall be deemed his retiring, and such teacher shall be entitled to a pension according to the provisions of this act.

Provisions for  
refunding.

HISTORY.—R. S. § 3897b; 92 v. 154; 94 v. 308; 95 v. 613; 102 v. 445.

Eligibility of a teacher for receiving a pension is fixed by the statute at twenty years' teaching experience, without regard to the place where the teaching was done.

The provision of the statute that the refusal of a board of education to re-employ a teacher shall be deemed his retiring, and such teacher shall thereupon become entitled to a pension under the provisions of the act, gives him the right to a pension, notwithstanding that the board of education might not have intended to retire him by their refusal to re-employ him. Board of Trustees, etc. v. State ex rel., 31 O. C. A. 601.

Under the provisions of Part Second, Title V, Chapter 9, of the General Code, the creation of a teachers' pension fund is optional with the board of education of any school district, but the allowance and payment of such pension must be made as provided by such law and is not within the discretion of the board of education or the board of trustees of such fund.

A teacher employed by a board of education of a district wherein a teachers' pension fund has been created, to which he has contributed as provided by such law, who is willing to continue in such service, but is not re-employed by the board of education, is entitled to a pension under the provisions of said act, where it appears that such teacher had been engaged in teaching in the public schools for a period aggregating twenty years, regardless of whether one-half of the period of his service was rendered in the county within which such school district is situated. Shinnick v. State, ex rel., 101 O. S. 246.

A teacher who has taught in this state for thirty-five years and in the public schools of a county eleven and one-half years and has contributed to the teachers' pension fund in the district where such fund is created for seven years and eight months is entitled to a teacher's pension under section 7891 G. C. Op. Atty. Gen. (1917), p. 2432.

See Opinions of Attorney General as follows:

(1917), p. 2432, cited under Sec. 7891.

(1917), p. 785, cited under Sec. 7882.

(1918), p. 85, cited under Sec. 7877.

SECTION 7892. In case of the death of a teacher, the heirs, legatees or assigns of the deceased, shall be entitled to receive half of the total amount paid by such teacher into such fund upon application therefor, with proof of claim to the satisfaction of the board of trustees.

Heirs, legatees  
or assigns of  
deceased  
teacher en-  
titled to half  
amount paid.



HISTORY.—R. S. § 3897h; 92 v. 154; 94 v. 308; 95 v. 613.

See Opinion of Attorney General (1915), p. 1117, cited under Sec. 7880.

Rules and regulations.

SECTION 7893. The board of trustees shall make such rules and regulations as it may deem expedient or necessary for its government; which must be adopted, and when adopted, may be amended, by a vote of not less than two-thirds of all the members of the board.

HISTORY.—R. S. § 3897i; 94 v. 308; 95 v. 613.

Monthly payments to be made by board.

SECTION 7894. The board of education in any school district which has created, or shall create, a teachers' pension fund, shall pay monthly into such fund all deductions from the salaries of teachers on account of their tardiness or absence.

HISTORY.—R. S. § 3897k; 97 v. 340; 98 v. 158.

Payments from contingent fund.

SECTION 7895. The board of education in any school district which has created, or shall create, a teacher's pension fund, semi-annually, shall pay from the contingent fund of such school district into such fund, not less than one per cent. nor more than two per cent. of the gross receipts of the board raised by taxation, which shall be applied to the payment of teachers' pensions, as hereinbefore provided.

HISTORY.—R. S. § 3897l; 97 v. 340; 98 v. 158.

See Opinions of Attorney General No. 2754, (1921), cited under Sec. 7896-1.

Transfer of existing funds.

SECTION 7896. Upon the election and organization of a board of pension trustees under this chapter in any school district, any school teachers' pension fund heretofore created for such district under any former act shall be transferred to the board of trustees created under this chapter by the board or persons having control thereof. Beneficiaries under such transferred fund shall receive pensions under this chapter.

HISTORY.—R. S. § 3897j; 95 v. 613.

## CHAPTER 26

### STATE TEACHERS' RETIREMENT SYSTEM

#### SECTION.

- 7896-1. Definition of words and phrases.
- 7896-2. Teacher's retirement system established; rights of retirement board.
- 7896-3. Administration and management vested in board.
- 7896-4. Membership of board.
- 7896-5. Election of teacher members.
- 7896-6. Annual election; filling vacancies.
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#### SECTION.

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SECTION 7896-I. That the following words and phrases as used in this act [G. C. §§ 7896-1 to 7896-63], unless a different meaning is plainly required by the context, shall have the following meanings:

"Retirement System" shall mean the "State Teachers' Retirement System" provided for in this act.

"Retirement Board" shall mean the board provided for in this act to administer said retirement system.

"Employer" shall mean the board of education, school district or other agency within the state of Ohio by which a teacher is employed or paid.

Definition of words and phrases.

"Teacher" shall mean any teacher or other person regularly employed in the public schools of the state of Ohio, who is required by law to have a teachers' certificate; and any teacher in any school or college or other institution wholly controlled and managed, and wholly or partly supported by the state or any subdivision thereof, the board of trustees or other managing body of which shall accept the requirements and obligations of this act.

"Present-teacher" shall mean any person who was a teacher, as defined by this act, before the first day of September, nineteen hundred and twenty; whose membership in the retirement system has been continuous; and,

(a) who became a member on said date, or on the date of his first service as a teacher after said date and within one year after his last day of service previous to said first day of September, nineteen hundred and twenty; or,

(b) who was a teacher of a school or college or other institution on said date, or on a subsequent date within one year after his last day of service as such teacher previous to said first day of September, nineteen hundred and twenty, and who continued thereafter to be a teacher thereof until he, with the teaching staff of such school or college or other institution, became a member of the retirement system as provided in this act; or,

(c) who was a member of a local district pension system on said date, or on the date of his first eligibility to such membership after said date and within one year after his last day of membership therein previous to said first day of September, nineteen hundred and twenty, and who continued thereafter to be a member until he, with the membership of such local district pension system, became a member of the retirement system.

"New-entrant" shall mean any teacher who is a member except a present-teacher.

"Prior-service" shall mean all service as a teacher, as defined by this act, rendered before the first day of September, nineteen hundred and twenty, by a present-teacher and similar service in another state credit for which was procured by a present-teacher as provided by this act.

"Total-service" shall mean all service of a member of the retirement system since last becoming a member and, in addition thereto, all his prior-service, computed as provided in this act.

"Member" shall mean any person included in the membership of the retirement system as provided in this act.

"Contributor" shall mean any person who has an account in the teachers' saving fund.

"Beneficiary" shall mean any person in receipt of a retirement allowance or other benefit provided by this act.

"Regular interest" shall mean interest at four per centum per annum, compounded annually.

"Accumulated contributions" shall mean the sum of all amounts deducted from the compensation of a member



and credited to his individual account in the teachers' savings fund together with regular interest thereon.

"Final average salary" shall mean the average annual compensation, not exceeding two thousand dollars, earnable as a teacher by a member during the ten years immediately preceding his date of retirement.

"Annuity" shall mean payments for life derived from contributions made by a contributor and paid from the annuity and pension reserve fund as provided in this act. All annuities shall be paid in twelve equal monthly installments.

"Pension" shall mean annual payments for life derived from appropriations made by an employer and paid from the employers' accumulation fund or the annuity and pension reserve fund as provided in this act. All pensions shall be paid in twelve equal monthly installments.

"Retirement allowance" shall mean the pension plus the annuity.

"Annuity reserve" shall mean the present value computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest, of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted to a member under the provisions of this act.

"Pension reserve" shall mean the present value computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest, of all payments to be made on account of any pension, or benefit in lieu of any pension, granted to a member under the provisions of this act.

The year for the administration of this act shall mean the school year and shall begin September first and end with August thirty-first next following.

"Local district pension system" shall mean any school teachers' pension fund created in any school district of the state of Ohio in accordance with the laws of such state prior to the first day of September, nineteen hundred and twenty.

HISTORY.—108 v. Pt. I 195, § 1.

A teacher who has not taught for one or more years prior to September 1, 1920, would not be eligible to membership in the state teachers' retirement system and have the status of "present teacher", even though teaching during the school year of 1920-21, unless such teacher was teaching at the beginning of the school term starting in the school year beginning on September 1, 1920.

The state teachers' retirement system is for the benefit of teachers regularly employed as such and under the provisions of section 7896-50 G. C. each employer shall certify to the state retirement board the names of all teachers to whom the act applies and at such times as the state retirement board may require.

Where a substitute teacher is regularly employed and carried on the payroll as one of the teaching force, such substitute teacher is entitled to the provisions of the teachers' retirement system law.

Under authority of section 7896-3 G. C., the retirement board can and should make all necessary rules and regulations for the proper administration of the state teachers' retirement system law.

Under the provisions of section 7896, where teachers are in a class (a) whose compensation is only partly paid by the state, or (b) who are not in serving on a per annum basis, or (c) who are on a temporary basis, or (d) who are not required to have a teacher's certificate, it is for the state retirement board to say which classes shall be denied membership; but such retirement board may, in its discretion, make optional with teachers in any such classes their individual entrance into membership. Op. Atty. Gen. (1920), p. 421

See Opinions of Attorney General No. 2220, (1921), cited under Sec. 7896-55.

In computing the "final average salary" (7896-1 G. C.) as defined in the teachers' retirement act, the total earned compensation as an employed teacher during the ten calendar years preceding retirement should be divided by the number of years in which such compensation as a teacher was earned and received.

Where a teacher was on leave of absence or out of active service as a teacher for two years during the period of the last ten calendar years, prior to the date of retirement, the total of the compensation received as a teacher during such ten calendar years should be divided by eight, the number of years in which such compensation as a teacher was actually earned and received.

Where a teacher desiring to retire at the close of the years 1920-1921 was out of active service as a teacher for two years during the last ten calendar years prior to retirement, and her salary for the school year 1916-1917 was \$1,000, and her salary for the school year 1919-1920 was 1,200, to compute her compensation "earnable as a teacher" as \$1,000 during the two years she was out of service as a teacher, would be incorrect, for her compensation earnable as a teacher during such two years would be the amount paid by the employing board of education during such two years. Unless the person was employed as a teacher and received compensation therefor during such period of two years, such person would have no compensation earnable as a teacher during that two years.

In computing final average salary under the teachers' retirement act, the retirement board should credit the teacher with all the compensation received as a teacher during the preceding ten calendar years and the total of such compensation, when divided by the number of years in which compensation is earned as a teacher, would be the final average salary, but where such final average salary exceeds \$2,000, such excess above \$2,000 cannot be considered.

Where a teacher asks retirement at the middle of the school year, such retirement is effective as of August 31st following, unless in case of disability retirement, and in computing final average salary the salary earned and received during the year 1920-1921 should be counted as her earnable compensation received as a teacher during that year. Op. Atty. Gen. No. 2034, April 28, 1921.

There is no provision in the state teachers' retirement system law (7896-1 to 7896-64) for the reinstatement as an active teacher of a beneficiary or pensioner by a board of education, the sole exception being in the case of disability beneficiaries who may be restored to active service, as provided in section 7896-39 G. C.

A pensioner of a local district pension system which has merged with the state teachers' retirement system, cannot be reinstated as an active teacher, either with or without the continuation of his pension payments, while in active service.

Where a local district pension system has merged with the state teachers' retirement system, the pensions paid to beneficiaries in the local district pension system shall thereafter be paid in the

same amount by the state teachers' retirement system, since these pensions have been accepted by the state teachers' retirement system as a liability in an exact amount at the time of valuation.

A pensioner of the state teachers' retirement system may not be reinstated as an active teacher by discontinuing his pension during such period of active teaching. Op. Atty. Gen. No. 2754, Dec. 31, 1921.

Schools or colleges or other institutions supported in whole or in part by the state or any subdivision thereof, and wholly controlled and managed by the state, or any subdivision thereof, have the period until September 1, 1921, in which to accept the requirements and obligations imposed by the state teachers' retirement system, but a person teaching in such school, college or institution, desiring prior service credit, must have been a teacher prior to the first day of September, 1920.

Service as a teacher in a privately endowed school, college or institution located within the state of Ohio, and which later becomes a tax supported institution under public control, should be allowed by the state teachers' retirement board in its computation of prior service as a teacher, even though such service as a teacher was rendered prior to the time that such school, college or university became a tax-supported institution and under public control.

Under the provisions of section 7896-30 G. C., a claim of a teacher for prior service credit in the state teachers' retirement system, cannot cover service as a teacher in another state unless such service as a teacher was rendered in the public day schools of another state, and service in a state-supported institution outside of Ohio cannot be held to be service in the public day schools of such state. Op. Atty. Gen. No. 1927, Mar. 19, 1921.

SECTION 7896-2. A state teachers' retirement system is hereby established for the teachers of the public schools of the state of Ohio which shall include the several funds created and placed under the management of a "Retirement Board" for the payment of retirement allowances and other benefits under the provisions of this act [G. C. §§ 7896-1 to 7896-63]. The retirement board herein created shall have the right to sue and be sued, plead and be impleaded, contract and be contracted with and do all things necessary to carry out the provisions of this act and by such name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property shall be held.

Teachers' retirement system established; rights of retirement board.

HISTORY.—108 v. Pt. I 195 (197), § 2.

SECTION 7896-3. The general administration and the management of the state teachers' retirement system and the making effective the provisions of this act [G. C. §§ 7896-1 to 7896-63] are hereby vested in the retirement board which shall have authority to make all necessary rules and regulations, not inconsistent with the provisions of this act, to carry into effect the provisions thereof.

Administration and management vested in board.

HISTORY.—108 v. Pt. I 195 (197), § 3.

SECTION 7896-4. The retirement board shall consist of five members as follows: (a) the superintendent of public instruction; (b) the auditor of state; (c) the attorney general, two other members known as teacher members, who

Membership of board.



shall be members of the retirement system and who shall be elected by ballot by the members of the retirement system.

HISTORY.—108 v. Pt. I 195 (197), § 4.

Election of  
teacher mem-  
bers.

SECTION 7896-5. The first election of teacher members of the retirement board shall be conducted by and under the supervision of the superintendent of public instruction within sixty days after the first day of September next succeeding the passage of this act [G. C. §§ 7896-1 to 7896-63]. At the first election each teacher shall be deemed to be a member of the retirement system and shall have the right to vote for two candidates for membership in the retirement board, provided, that any teacher in a local district pension system who exercises such right to vote shall be deemed to have petitioned for a merger with the state teachers' retirement system as provided in this act and his name shall be deemed to have been duly signed to any such petition subsequently circulated in such local district pension system. The candidate receiving the highest number of votes shall be elected to serve for a period ending on the second thirty-first of August following the election; the candidate receiving the second highest number of votes shall be elected to serve for a period ending on the thirty-first of August following the election.

HISTORY.—108 v. Pt. I 195 (197), § 5.

Annual elec-  
tion; filling  
vacancies.

SECTION 7896-6. Annually after the first election a member of the retirement system shall be elected by ballot to membership in the retirement board to serve for a term of two years beginning on the first day of September following the election. Vacancies occurring in the terms of teacher members of the board shall be filled by the remaining members of the board by election for the unexpired terms. Teacher members of the retirement board who fail to attend the meetings of the board for four months or longer, without being excused, shall be considered as having resigned and successors shall be elected for their unexpired terms.

HISTORY.—108 v. Pt. I 195 (197), § 6.

Time of  
election; who  
eligible.

SECTION 7896-7. All elections for members of the retirement board after the first election shall be held on the first Monday of May of each year under the direction of the retirement board. Any member of the retirement system shall be eligible for election as a member of the retirement board and the name of any member who shall be nominated by a petition signed by at least one hundred members of the retirement system shall be placed upon the ballots by the retirement board as a regular candidate. Other names of eligible candidates may at any election be substituted for the regular candidates by writing such names upon the ballots. The candidate receiving the highest number of votes for any term as member of the retirement

board shall be elected a member of the retirement board for such term.

HISTORY.—108 v. Pt. I 195 (198), § 7.

SECTION 7896-8. Until the first election shall have been held and the teacher-members elected thereat duly installed, the ex officio members of the retirement board shall constitute an acting retirement board.

Acting board  
until first  
election.

HISTORY.—108 v. Pt. I 195 (198), § 8.

SECTION 7896-9. Each member of the retirement board created by this act [G. C. §§ 7896-1 to 7896-63] upon appointment or election shall take an oath of office that he will support the constitution of the United States, the constitution of the state of Ohio, and that he will diligently and honestly administer the affairs of the said board and that he will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to this act. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and shall be immediately filed in the office of the secretary of state.

Oath of office.

HISTORY.—108 v. Pt. I 195 (198), § 9.

SECTION 7896-10. A majority of the members of the retirement board shall constitute a quorum for the transaction of any business.

Quorum.

HISTORY.—108 v. Pt. I 195 (198), § 10.

SECTION 7896-11. The members of the retirement board shall serve without compensation, but they shall be reimbursed from the expense fund for all actual necessary expenses and for any loss of salary or wages they may suffer through serving on the retirement board.

No compensa-  
tion; expenses.

HISTORY.—108 v. Pt. I 195 (198), § 11.

SECTION 7896-12. The retirement board shall elect from its membership a chairman.

Chairman.

HISTORY.—108 v. Pt. I 195 (198), § 12.

SECTION 7896-13. The treasurer of the state of Ohio shall be the custodian of the funds of the retirement system, and all disbursements therefrom shall be paid by him only upon vouchers duly authorized by the retirement board and bearing the signatures of said board; or, such vouchers may bear the fac-similie [facsimile] signatures of the board members printed thereon and the signatures of the president and secretary of said board.

Custodian of  
funds.

The treasurer of state shall give a separate and additional bond in such amount as may be fixed by the governor, but not less than the amount of money in all of the funds of the retirement system at the time such bond is fixed and with sureties to the approval of the governor, conditioned for the faithful performance of the duties of such treasurer as custodian of the funds of the retirement system

Additional  
bond; where  
deposited.

provided for herein. Such bond shall be deposited with the secretary of state and kept in his office. The governor may from time to time require the treasurer of state to give other and additional bonds, as the funds of said retirement system increase, in such amounts and at such times as may be fixed by the governor which additional bonds shall be conditioned and filed as is provided for the original bond of the state treasurer covering the funds of the retirement system.

Deposit of funds.

The treasurer of state is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by such treasurer, and all interest earned by such portion of the said retirement funds as may be deposited by the state treasurer in pursuance of authority herewith given shall be collected by him and placed to the credit of such fund or funds.

HISTORY.—108 v. Pt. I 195 (198), § 13.

Legal adviser.

SECTION 7896-14. The attorney general of the state of Ohio shall be the legal adviser of the retirement board.

HISTORY.—108 v. Pt. I 195 (199), § 14.

Employment of secretary, etc.; compensation.

SECTION 7896-15. The retirement board shall have power to employ a secretary and to secure the service of such technical and administrative employees as may be necessary for the transaction of the business of the retirement system. The compensation of all persons engaged by the retirement board and all other expenses of the board necessary for the proper operation of the retirement system shall be paid at such rates and in such amounts as the retirement board shall approve. The retirement board shall receive and act upon all applications for retirement under the provisions of this act and shall provide for the payment of all retirement allowances and other benefits and shall make such other necessary expenditures as are required or authorized by the provisions of this act [G. C. §§ 7896-1 to 7896-63].

Action upon application.

HISTORY.—108 v. Pt. I 195 (199), § 15.

Member of board shall be trustees of the funds; investment; collection of interest.

SECTION 7896-16. The members of the retirement board shall be the trustees of the several funds created by this act and said board shall have full power to invest same in bonds of the United States, the state of Ohio or of any county, city, village or school district of the state of Ohio at current market prices for such bonds; provided that such purchase be authorized by a resolution adopted by the board; and all such bonds so purchased, forthwith, shall be placed in the hands of the treasurer of state, who is hereby designated as custodian thereof, and it shall be his duty to collect the interest thereon as the same becomes due and payable and also the principal thereof and place the same when so collected into the retirement funds herein provided



for. The treasurer of state shall honor and pay all vouchers drawn on the retirement funds for the payment of such bonds upon delivery of said bonds to him when there is attached to such vouchers a certified copy of such resolution of the board authorizing the purchase of such bonds; and the board may sell any of said bonds upon like resolution, and the proceeds thereof shall be paid by the purchaser to the treasurer of state upon delivery to him of said bonds by the treasurer.

HISTORY.—108 v. Pt. I 195 (199), § 16.

SECTION 7896-17. All interest earned upon the entire amount of money belonging to said retirement system shall be divided among the various funds thereof proportionately, except that no interest shall be credited to the guarantee and expense funds herein provided for.

Apportionment  
of interest.

HISTORY.—108 v. Pt. I 195 (200), § 17.

See Opinions of Attorney General No. 2028, (1921), cited under Sec. 7896-56.

SECTION 7896-18. Except as herein provided, no trustee and no employee of the retirement board shall have any interest direct or indirect in the gains or profits of any investment made by the board nor as such directly or indirectly receive any pay or emolument for his services. And no trustee or employee of the said board directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by the board; nor shall any member or employee of said board become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed of the board.

Trustee or em-  
ployee shall  
have no inter-  
est in  
profits nor  
borrow funds.

HISTORY.—108 v. Pt. I 195 (200), § 18.

SECTION 7896-19. The retirement board shall provide for the maintenance of an individual account with each member showing the amount of the member's contributions and the interest accumulations thereon. It shall collect and keep in convenient form such data as shall be necessary for the preparation of the required mortality and service tables, and for the compilation of such other information as shall be required for the actuarial valuation of the assets and liabilities of the various funds created by this act. Upon the basis of the mortality and service experience of the members and beneficiaries of the system, the retirement board from time to time shall adopt the tables to be used for valuation purposes and for determining the amount of annuities to be allowed on the basis of the contributions of members.

Individual  
accounts shall  
be kept;  
other data.

HISTORY.—108 v. Pt. I 195 (200), § 19.

Report showing assets and liabilities of the various funds, etc.

SECTION 7896-20. At such times as the retirement board may deem it necessary and at least once within the first three years of the operation of this act [G. C. §§ 7896-1 to 7896-63], and once in each quinquennial period thereafter the retirement board shall have prepared by a competent actuary familiar with retirement systems, a report showing a complete valuation of the present and prospective assets and liabilities of the various funds created by this act with the exception of the guarantee fund and the expense fund. The actuary shall make an investigation of the mortality and service experience of the members of the system and shall report fully upon the condition of the retirement system together with such recommendations as he shall deem advisable for the information of the retirement board in the proper operation of the retirement system.

HISTORY.—108 v. Pt. I 195 (200), § 20.

See Opinions of Attorney General No. 2220, (1921), cited under Sec. 7896-55.

Annual statement of amount of funds.

SECTION 7896-21. The custodian shall furnish annually to the retirement board a sworn statement of the amount of the funds in his custody belonging to the retirement system. The records of the retirement board shall be open to public inspection and any member of the retirement system shall be furnished with a statement of the amount to the credit of his individual account upon written request by such member, provided that the retirement board shall not be required to answer more than one such request of a member in any one year.

HISTORY.—108 v. Pt. I 195 (201), § 21.

See Opinions of Attorney General No. 2028, (1921), cited under Sec. 7896-56.

Membership of the retirement system.

SECTION 7896-22. The membership of the retirement system shall consist of the following:

(a) All teachers in service on the first day of September, nineteen hundred and twenty, except teachers who have filed with their employer a statement in writing requesting exemption from membership or teachers who are excluded by the provisions of this act [G. C. §§ 7896-1 to 7896-63].

(b) All teachers who became teachers or who were reappointed as teachers after the first day of September, nineteen hundred and twenty, except teachers who are excluded by the provisions of this act.

(c) The teachers in any school or college or other institution supported in whole or in part by the state or any subdivision thereof and wholly controlled and managed by the state or any subdivision thereof shall become members on the same terms and conditions as the teachers in the public schools, provided that the board of trustees or other managing body of such school, college or other institution, if such institution is now in existence or if in existence on said date, shall agree by formal resolution adopted before

September first, nineteen hundred twenty-one, to accept all the requirements and obligations imposed by this act upon employers of members. Any institution which comes into existence as such thereafter shall have ninety days in which to accept said requirements and obligations. A certified copy of said resolution shall be filed with the retirement board. When such resolution shall have been adopted and a copy of it filed with the retirement board, it shall not later be subject to rescindment or abrogation. Service in such schools, colleges or other institutions shall be then considered in every way the same as service in the public schools so far as the purposes of this act are concerned, and

(d) All other teachers who become contributors under the provisions of this act.

HISTORY.—108 v. Pt. I 105 (201), § 22.

See Opinions of Attorney General No. 1927, (1921), cited under Sec. 7896-1.

SECTION 7896-22a. In addition to the membership of the retirement system as prescribed in section 7896-22, General Code, there shall be included therein the educational employees of the state department of public instruction. The contributions ordinarily made by boards of education shall be made in the cases of employees of the department of public instruction by state appropriation and in the cases of such other employees as may be included, from the funds of the respective boards or organizations.

Employees in department of public instruction included.

Persons so included shall be included in the definition of "teacher" as used in sections 7896-1 to 7896-63, General Code; the service of all persons in such capacities shall be included as prior service provided such persons are present teachers as defined in section 7896-1, General Code, or are in the service described in the first sentence of this section at the time this section goes into effect, and in the latter case service for the present school year shall be included in the prior service of such persons.

Payments by and for persons included in the retirement system by virtue of this section shall begin September 1, 1921.

When payments begin.

HISTORY.—109 v. 237.

SECTION 7896-23. Members of a local district pension system maintained under the laws of the state of Ohio from appropriations or contributions made wholly or in part by any employer and existing at the time this bill becomes a law are hereby excluded from membership in this retirement system. But should a majority of all the teachers participating in any such local district pension system apply for membership in the retirement system created by this act [G. C. §§ 7896-1 to 7896-63] by a petition duly signed and verified, approved by their employer, and filed with the retirement board, all the teachers included in the membership of such local district pension system shall become members of the retirement system created by this

Teachers excluded from membership.

Membership upon petition.



act at such time within three months after the filing of such petition and the compliance with the other provisions of this act relative to the dissolution and discontinuance of such local district pension system as the retirement board shall designate.

HISTORY.—108 v. Pt. I 195 (202), § 23.

Right of denial to certain classes retained.

SECTION 7896-24. The retirement board, notwithstanding the foregoing provisions, may deny the right to become members to any class of teachers, whose compensation is only partly paid by the state, or who are not serving on a per annum basis, or who are on a temporary basis, or who are not required to have a teacher's certificate, and it may also, in its discretion, make optional with teachers in any such class their individual entrance into membership.

HISTORY.—108 v. Pt. I 195 (202), § 24.

Under the provisions of section 7896-24 G. C., the state retirement board of the state teachers' retirement system may, in its discretion, make optional with teachers who are not required to have a teachers' certificate, their individual entrance into membership in the state teachers' retirement system.

Where a college or institution supported in whole or in part by the state, or any subdivision thereof, enters the state teachers' retirement system, prior to September 1, 1920, the teachers in such college or institution may file with their employer, prior to September 1, 1920, a statement in writing requesting exemption from membership in the state teachers' retirement system, as provided in section 7896-22, paragraph (a). Op. Atty. Gen. (1920), p. 638.

When membership shall cease.

SECTION 7896-25. The membership of any person in the retirement system shall cease if he withdraw his accumulated deductions or if he retire on a pension as provided in this act [G. C. §§ 7896-1 to 7896-63], or if he die, or if, in any four-year period after he last became a member, he shall render less than two years of service as a teacher.

HISTORY.—108 v. Pt. I 195 (202), § 25.

See Opinions of Attorney General No. 2754, (1921), cited under Sec. 7896-1.

Statement upon becoming member.

SECTION 7896-26. Each teacher, upon becoming a member, shall file a detailed statement of all his previous service as a teacher and shall furnish such other facts as the retirement board may require for the proper operation of the retirement system.

HISTORY.—108 v. Pt. I 195 (202), § 26.

Verification of statement.

SECTION 7896-27. To the extent to which it is used in determining the liability of any fund created by this act [G. C. §§ 7896-1 to 7896-63], the retirement board shall verify such statement by the best evidence it shall be able to obtain. If official records are not available as to the length of service, salary or other information required for the administration of this act, the board is hereby empowered to use its discretion as to the evidence to be accepted.

HISTORY.—108 v. Pt. I 195 (202), § 27.

SECTION 7896-28. The retirement board shall credit a year of service to any teacher who is employed in a school district for the number of months the regular day schools of such district were or shall be in session in said district within any year beginning on or about the first day of September and ending on or about the first day of August following, and shall fix and determine by appropriate rules and regulations how much credit shall be given for parts thereof, but in computing such service, or in computing final compensation, it shall credit no time during which a member was absent without pay, and it shall credit not more than one year for all service rendered in any school year.

Service credits.

HISTORY.—108 v. Pt. I 195 (202), § 28.

SECTION 7896-29. Subject to the above restrictions, and to such other rules and regulations as the retirement board shall adopt, said board shall issue to each present-teacher a certificate certifying to the aggregate length of all his prior-service as a teacher as defined in this act [G. C. §§ 7896-1 to 7896-63].

Certificate of prior service.

HISTORY.—108 v. Pt. I 195 (203), § 29.

SECTION 7896-30. Any present-teacher or new entrant, in addition to service as a teacher as defined in this act [G. C. §§ 7896-1 to 7896-63], may claim credit for similar service as a teacher in the public day schools of another state of the United States or of any territory or possession of the United States and such service shall be treated by the retirement board and included in his prior-service certificate as if it were service in the state of Ohio provided the teacher shall pay into the employers' accumulation fund an amount equal to the additional liability assumed by such fund on account of the crediting of such years of service rendered outside of the state. The retirement board shall have final authority to determine and fix the amount that any teacher shall pay on account of such service outside of the state in the case of any present-teacher or new entrant, who desires to claim outside service and make such payment.

Additional credits.

HISTORY.—108 v. Pt. I 195 (203), § 30.

See Opinions of Attorney General No. 1927, (1921), cited under Sec. 7896-1.

SECTION 7896-31. So long as membership continues, a prior-service certificate shall be final and conclusive for retirement purposes as to such service, unless modified by the retirement board upon application made by the member or upon its own initiative within one year after the date of its issuance or modification, or in case a mistake is found therein within one year of the time such mistake is so found.

When prior service certificate shall be conclusive.

HISTORY.—108 v. Pt. I 195 (203), § 31.

SECTION 7896-32. When a present-teacher ceases to be a member his prior-service certificate shall be void and not renewable.

When certificate void.

HISTORY.—108 v. Pt. I 195 (203), § 32.

Total service credited at retirement.

SECTION 7896-33. At retirement the total service credited a teacher shall consist of all his service as teacher since he last became a member and, if he has a prior-service certificate which is in full force and effect, all service certified on such prior-service certificate.

HISTORY.—108 v. Pt. I 195 (203), § 33.

Who may retire.

SECTION 7896-34. Any teacher, except a new entrant with less than five years of service, who has attained sixty years of age may retire, if a member, by filing with the retirement board an application for retirement. The filing of such application shall retire such member as of the end of the school year then current. At the end of the school year in which they become members the retirement board shall retire all teachers who were over seventy years of age at the time they became members and shall retire all other members at the end of the school year in which the age of seventy is attained, provided in each case the consent of the employer is secured.

Board may retire, whom.

HISTORY.—108 v. Pt. I 195 (203), § 34; 109 v. 238.

Allowance upon superannuation retirement.

SECTION 7896-35. Upon superannuation retirement, a teacher shall be granted a retirement allowance consisting of:

- (a) An annuity having a reserve equal to the amount of the teacher's accumulated contributions at that time, and
- (b) A pension of equivalent amount; and
- (c) An additional pension, if such teacher is a present-teacher, equal to one and one-third percentum of his average final salary multiplied by the number of years of service certified in his prior-service certificate.

HISTORY.—108 v. Pt. I 195 (204), § 35.

Commuted superannuation allowance.

SECTION 7896-36. Any teacher who has completed thirty-six years of total service may retire, if a member, on a commuted superannuation allowance by filing with the retirement board an application for such form of allowance. The filing of such application shall retire such member as of the end of the school year then current. Upon retirement on a commuted superannuation allowance, a teacher shall be granted a retirement allowance consisting of:

- (a) an annuity having a reserve equal to the amount of the teacher's accumulated contributions at that time; and
- (b) a pension, having a reserve equal to the amount of the total liability of the employers' accumulation fund for the payment upon superannuation retirement of a pension equal to the annuity which the teacher's accumulations would purchase provided such teacher made no further payments; and
- (c) an additional pension, if such teacher is a present-teacher, having a reserve equal to the amount of the total liability of the employers' accumulation fund for the payment of the pension allowable on superannuation retire-



ment by reason of prior-service as certified in such teacher's prior-service certificate. Provided, however, that no teacher retiring after thirty-six years of service shall receive less than twenty-five dollars per month as a total retirement allowance.

HISTORY.—108 v. Pt. I 195 (204), § 36.

SECTION 7896-37. Medical examination of a member for disability shall be made upon the application of the employer or upon the application of the member or of a person acting in his behalf stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired, provided that the said member was a teacher as defined in this act [G. C. §§ 7896-1 to 7896-63] for not less than ten years preceding his retirement and was a member in each of such ten years which were subsequent to the year nineteen hundred and twenty. If such medical examination, conducted by a competent disinterested physician, or physicians, selected by the retirement board shows that the said member is physically or mentally incapacitated for the performance of duty and ought to be retired, the examining physician, or physicians, shall so report and the retirement board shall retire the said member for disability forthwith.

Medical examination for disability.

HISTORY.—108 v. Pt. I 195 (204), § 37.

SECTION 7896-38. Upon disability retirement, a member shall receive a retirement allowance which shall consist of:

Allowance upon disability retirement.

(a) an annuity having a reserve equal to the amount of the teacher's accumulated contributions at that time; and

(b) a pension which, together with his annuity, shall provide a retirement allowance of one and one-fifth per centum of his final average salary multiplied by the number of his years of total-service, but not less than thirty per centum of said final average salary, with the exception that in no case shall the rate per centum of final average salary to which said retirement allowance amounts exceed nine-tenths of the rate per centum of final average salary to which he probably would have been entitled had retirement been deferred to the age of sixty.

HISTORY.—108 v. Pt. I 195 (205), § 38.

SECTION 7896-39. A disability beneficiary, notwithstanding the provisions of this act [G. C. §§ 7896-1 to 7896-63], shall be considered on leave of absence during his first five years on the retired list and shall retain his membership in the retirement system. Once each year during said period, the retirement board shall require any disability beneficiary under the minimum age for superannuation retirement to undergo medical examination, said examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Upon completion of such examination by an examining physician, or physicians,

Disability beneficiary considered on leave of absence; annual examination of beneficiary.

Restoration to position and salary, when.

Allowance ceases on restoration to active service.

Effect of refusal to submit to medical examination.

selected by the retirement board, the examiner shall report and certify to the board whether said beneficiary is physically and mentally capable of resuming service similar to that from which he was retired. If the retirement board concur in a report by the examining physician or physicians that the said disability beneficiary is capable of resuming service similar to that from which he was retired, the board shall so certify to his last employer before retirement and said employer by the first day of the next succeeding school year shall restore said beneficiary to his previous position and salary or to a position and salary similar thereto. Should any disability beneficiary die during such leave of absence aforesaid his estate shall be paid the balance which remains to his credit in the retirement fund at his death. Should a disability beneficiary be restored to active service his retirement allowance shall cease and the annuity and pension reserves on his allowance at that time in the annuity and pension reserve fund shall be transferred from the annuity and pension reserve fund to the teachers' savings fund and the employers' accumulation fund respectively. Should any disability beneficiary, during his first five years on the retired list and while under the age of sixty years, refuse to submit to a medical examination as required by this act, his retirement allowance shall be discontinued until his withdrawal of such refusal, and should such refusal continue for one year, all his rights in and to such retirement allowance shall be forfeited. After a disability beneficiary has been on the retired list for a period of five years he shall not be required to submit to further disability examination.

HISTORY.—108 v. Pt. I 195 (205), § 39.

See Opinions of Attorney General No. 2754, (1921), cited under Sec. 7896-1.

Contributor who ceases to teach entitled to balance; limitation.

SECTION 7896-40. A contributor who ceases to be a teacher for any cause other than death or retirement, upon demand, within ten years after such cessation of service, shall be paid the accumulated contributions standing to the credit of his individual account in the teachers' savings fund. Ten years after such cessation of service, if no previous demand has been made, any accumulated contributions of a contributor shall be returned to him or to his legal representative. If the contributor or his legal representatives can not then be found, his accumulated contributions shall be forfeited to the retirement system and credited to the guarantee fund.

HISTORY.—108 v. Pt. I 195 (206), § 40.

Payment on death of contributor.

SECTION 7896-41. Should a contributor die before retirement, his accumulated contributions shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the retirement board. If no legal representatives can be found, his

accumulated contributions shall be forfeited to the retirement system and credited to the guarantee fund.

HISTORY.—108 v. Pt. I 195 (206), § 41.

SECTION 7896-42. Until the first payment on account of any benefit is made, the beneficiary may elect to receive such benefit in a retirement allowance payable throughout life, or the beneficiary may then elect to receive the actuarial equivalent at that time of his annuity, his pension, or his retirement allowance, in a lesser annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life with the provision that,

Election by beneficiary; options.

Option 1—If he die before he has received in payments the present value of his annuity, his pension, or his retirement allowance, as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person, having an insurable interest in his life, as he shall nominate by written designation duly acknowledged and filed with the retirement board.

Option 2—Upon his death, his annuity, his pension, or his retirement allowance, shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement.

Option 3—Upon his death, one-half of his annuity, his pension, or his retirement allowance, shall be continued throughout the life of such person, having an insurable interest in his life as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement.

Option 4—Some other benefit or benefits shall be paid either to the beneficiary or to such other person or persons as he shall nominate provided such other benefit or benefits, together with such lesser annuity, or lesser pension, or lesser retirement allowance shall be certified by the actuary engaged by the retirement board to be of equivalent actuarial value to his annuity, his pension or his retirement allowance, and shall be approved by the retirement board.

HISTORY.—108 v. Pt. I 195 (206), § 42.

SECTION 7896-43. Each teacher who is a member of the retirement system shall contribute four per centum of his earnable compensation not exceeding two thousand dollars per annum, to the teachers' savings fund. Each employer shall deduct from the compensation of each contributor on each and every payroll of such contributor for each and every payroll period subsequent to the date upon which such contributor for each and every payroll period subsequent to the date upon which such contributor became a member an amount equal to four per centum of such contributor's earnable compensation provided that the amount of a contributor's earnable compensation in excess of two thousand dollars per annum shall not be considered. In de-

Per centum of compensation as contribution required; deductions by employer.



termining the amount earnable by a contributor in a payroll period, the retirement board and the employer may consider the rate of compensation payable to such contributor on the first day of the payroll period as continuing throughout such payroll period and deductions may be omitted from compensation for any period less than a full payroll period, if a teacher was not a contributor on the first day of the payroll period; and to facilitate the making of deductions, the deduction required of any contributor may be modified in any payroll period by an amount not exceeding ten cents. The deductions provided herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt in full for his salary or compensation, and payment less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment. Each teacher shall pay with the first payment to the teachers' savings fund each year, and in addition thereto a sum to be determined by the retirement board, but not to exceed one dollar, which amount shall be credited to the expense fund. Said payments for the expense fund shall be made to the retirement board in the same way as payments to the teachers' savings fund shall be made.

Payment to  
expense ac-  
count.

HISTORY.—108 v. Pt. I 195 (207), § 43.

See Opinions of Attorney General No. 2028, (1921), cited under Sec. 7896-56.

Payment to  
"normal con-  
tribution" and  
"deficiency  
contribution,"  
funds; rates,  
how fixed.

SECTION 7896-44. Each employer of a teacher who is a member of the retirement system shall pay to the employers' accumulation fund a certain per centum of the earnable compensation of each such teacher to be known as the "normal contribution" and a further per centum of the earnable compensation of each such teacher to be known as the "deficiency contribution." The amount paid by an employer on account of the deficiency contribution shall after the first payment be at least three per centum greater than the amount paid by him during the preceding year. The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system and shall be certified to the employers by the retirement board after each actuarial valuation. Until the first such certification, the normal contribution shall be two and eight-tenths per centum of the members' salaries and the deficiency contributions shall be two and seventy-seven hundredths per centum of the members' salaries.

HISTORY.—108 v. Pt. I 195 (207), § 44.

Under the provisions of section 7896-44, boards of education are required to pay to the employers' accumulation fund of the state teachers' retirement system, both the normal contribution and the deficiency contribution mentioned in such section only upon those teachers who are members of the retirement system

and come within the class defined as "contributors" to such system.  
Op. Atty. Gen. (1920), p. 618.

See Opinions of Attorney General as follows:

No. 2220, (1921), cited under Sec. 7896-55.

No. 2754, (1921), cited under Sec. 7896-1.

SECTION 7896-45. On the basis of regular interest and of such mortality and other tables as shall be adopted by the retirement board, the actuary engaged by the retirement board to make each valuation required by this act during the period over which the deficiency contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant, who is a contributor, which, if contributed on the basis of the compensation of such contributor throughout his entire period of active service, would be sufficient to provide at the time of his retirement the total amount of his pension reserve. The rate per centum so determined shall be known as the "Normal contribution" rate. After the deficiency contribution has ceased to be payable, the normal contribution shall be the rate per centum of the earnable salary of all contributors obtained by deducting from the total liabilities of the employers' accumulation fund of the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salary of all contributors as computed on the basis of the mortality and service tables adopted by the retirement board and on regular interest. The normal rate of contribution shall be determined by the actuary after each valuation, and shall be certified to the employers by the retirement board and shall continue in force until a new valuation and certification.

How "normal contribution" rate determined.

HISTORY.—108 v. Pt. I 195 (208), § 45.

SECTION 7896-46. Immediately succeeding the first valuation, the actuary engaged by the retirement board shall compute the percentage of the total compensation of all contributors during the preceding school year which is equivalent to four per centum of the amount of the total pension liability to all contributors not dischargeable during the remainder of the active service of all contributors by the aforesaid normal contribution. The contribution derived by deductions at the rate per centum so determined shall be known as the "deficiency contribution."

How "deficiency contribution" rate determined.

HISTORY.—108 v. Pt. I 195 (208), § 46.

SECTION 7896-47. Each employer shall pay annually into the employers' accumulation fund, in such monthly or less frequent installments as the retirement board shall require, an amount certified by the retirement board which shall equal the per centum of the total compensation, earnable by all contributors during the preceding school year, which is the sum of the two rates per centum hereinbefore described and required to be computed, to wit, the sum of

Monthly payments into employers' accumulation fund.

the normal contribution rate plus the deficiency contribution rate. The aggregate of all such payments by employers shall be sufficient, when combined with the amounts in the employers' accumulation fund, to provide the pensions payable out of the fund during the year then current, and if not, the additional amount so required shall be collected by means of an increased rate per centum of the deficiency contribution which shall be certified to the employers by the retirement board and shall continue in force for the period of one year.

HISTORY.—108 v. Pt. I 195 (208), § 47.

Where a board of education refuses or neglects to pay its normal or deficiency contributions to the state teachers retirement system, such local board of education is in dereliction of its duty and recourse should be had by those concerned to the provisions of section 7610-1, which provides that the county board of education, or the probate court, as the case may be, shall discharge the duties which have been neglected by the local board of education, and where money has been paid out from the county general fund by those authorized for the local board of education, such sum shall be a charge against the school district for which the money was paid.

Since January 1, 1922, a board of education, in anticipation of the collection of current revenues in any fiscal year, may under the provisions of section 5655 (H. B. 33) borrow money and issue certificates of indebtedness, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances, nor shall such certificates run for a longer period than six months or bear a greater rate of interest than six per cent., nor shall they be sold for less than par with accrued interest. Op. Atty. Gen. No. 3149, May 26, 1922.

When deficiency contribution shall be discontinued.

SECTION 7896-48. The beforementioned deficiency contribution contributable by the employers shall be discontinued as soon as the accumulated reserve in the employers' accumulation fund shall equal the present value, as actuarially computed, and approved by the retirement board, of the total liability of such fund for the payment of pensions less the present value, computed on the basis of the normal contribution rate then in force, of the normal contributions to be received on account of teachers who are at that time contributors.

HISTORY.—108 v. Pt. I 195 (209), § 48.

Notification before employment.

SECTION 7896-49. Each employer, before employing any teacher to whom this act may apply, shall notify such person of his duties and obligations under this act as a condition of his employment.

Provisions of act part of contract.

Any such appointment or reappointment of any teacher in the public day schools of the state on or after the first day of September, nineteen hundred and twenty, or service upon indefinite tenure after that date shall be conditioned upon the teacher's acceptance of the provisions of this act [G. C. §§ 7896-1 to 7896-63], as a part of the contract.

HISTORY.—108 v. Pt. I 195 (209), § 49.

See Opinions of Attorney General No. 2220, (1921), cited under Sec. 7896-55.



SECTION 7896-50. During September of each year, or at such other time as the retirement board shall approve, each employer shall certify to the retirement board the names of all teachers to whom this act [G. C. §§ 7896-1 to 7896-63] applies.

Names of  
teachers certi-  
fied to board.

HISTORY.—108 v. Pt. I 195 (209), § 50.

Under the provisions of section 7896-50 G. C., the names of all teachers to whom the teachers' retirement act applies, must be certified by the employer to the state retirement board, and teachers over seventy years of age prior to September 1, 1920, must be re-employed or re-appointed during the school year 1920-1921, in order to become members of the retirement system.

The state retirement board is without authority to retire any teacher soon after the beginning of the school year, 1920-21, or at any time during such school year, for the law provides in various sections that the retirement of teachers eligible to retirement shall be effective as of the end of the school year then current.

Retirement of teachers over seventy years of age takes place on August 31 of the school year in which they become members, and the state retirement board shall automatically retire all other teachers who are members at the end of the school year in which the age of seventy is attained. Pension to any teacher could not start on any day prior to the end of the school year in which such teacher was retired.

Teachers over sixty years of age who have taught prior to September 1, 1920, and are members of the state teachers' retirement system during the school year 1920-21, may retire by filing with the retirement board an application for retirement in accordance with the provisions of section 7896-34 G. C., but retirement and pension would not be effective if granted by the state retirement board until the end of the school year then current. Op. Atty. Gen. (1920), p. 519.

SECTION 7896-51. Each employer shall on the first day of each calendar month, or at such less frequent intervals as the retirement board may approve, notify the retirement board of the employment of new teachers, removals, withdrawals and changes in salary of teachers that shall have occurred during the month preceding or the period since the period covered by the last notification.

Notification  
of changes,  
monthly.

HISTORY.—108 v. Pt. I 195 (209), § 51.

SECTION 7896-52. Each employer shall cause to be deducted on each and every payroll of a contributor for each and every payroll period, subsequent to the first day of September, nineteen hundred and twenty, the contribution payable by such contributor as provided in this act [G. C. §§ 7896-1 to 7896-63]. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as voucher for the amounts so deducted and for the amount of the normal contribution and the deficiency contribution payable by the employer as provided in this act. Each employer shall send a duplicate of such statement to the secretary of the retirement board.

Deductions  
by employer  
certified to  
treasurer;  
duplicate to  
secretary of  
board.

HISTORY.—108 v. Pt. I 195 (209), § 52.

SECTION 7896-53. The treasurer of each employer on receipt from the employer of the voucher for deductions from the salaries of teachers and for the contributions of the employer as provided in this act [G. C. §§ 7896-1 to

Transmittal  
monthly of  
payments to  
board.

7896-63] shall transmit monthly or at such times as the retirement board shall designate the amounts specified in such voucher to the secretary of the retirement board. The secretary of the retirement board after making a record of all such receipts shall pay them to the treasurer of the state of Ohio for use according to the provisions of this act.

HISTORY.—108 v. Pt. I 195 (210), § 53.

Employer shall  
keep records.

SECTION 7896-54. Each employer shall keep such records and shall furnish such information and assistance to the retirement board as it may require in the discharge of its duties.

HISTORY.—108 v. Pt. I 195 (210), § 54.

Preference of  
tax levy.

SECTION 7896-55. Employers who obtain funds directly by taxation are hereby authorized and directed to levy annually such additional taxes as are required to provide the additional funds necessary to meet the financial requirements imposed upon them by this act [G. C. §§ 7896-1 to 7896-63], and said tax shall be placed before and in preference to all other items except for sinking fund or interest purposes.

HISTORY.—108 v. Pt. I 195 (210), § 55.

A board of education which has neglected or refused to levy a tax to meet the financial requirements of the state teachers' retirement system, in accordance with the provisions of section 7896-55 G. C., may not create a retirement fund out of which to pay the normal and deficiency contributions due from each board of education under the teachers' retirement act, by transferring to such retirement fund any money available in other funds unless such board of education has been granted authority to make such transfer by an order of the common pleas court, on an application duly made in compliance with the requirements of section 2296 et seq. General Code.

The tuition fund or the contingent fund of a board of education may not be used by such board to pay the required contribution to the state teachers' retirement system, unless a transfer of moneys in such funds is made under the provisions of section 2296 et seq., General Code.

The normal contribution and the deficiency contribution due from a board of education to the state teachers' retirement system are valid, existing and binding obligations, and where a board of education has neglected or refused to levy a tax to pay such contributions, in the manner provided for in section 7896-55 General Code, and a transfer of moneys from other funds of the board of education is not possible under section 2296 et seq. G. C., such board of education may borrow money or issue bonds under authority of section 5656 G. C. to meet such obligations. Op. Atty. Gen. No. 2220, July 1, 1921.

The levy provided for by section 7896-55 G. C., is not a part of any of the four principal levies of a school district. It is accordingly not included within the tuition levy, which to the extent of one mill is subject only to the fifteen mill limitation of the Smith one per cent law by virtue of the provisions of H. B. 615 (108 O. L., Part II —), but with other local school levies must be brought within the limitation of three mills provided by section 5649-3a G. C., as amended in said bill.

The board of education in making up its annual budget must designate the levy under section 7896-55 not as a special item of some other fund, but as a separate levy. The budget commission in acting upon the school levies is not at liberty to

reduce this levy unless such reduction is compelled by the fact that the levy itself, without consideration of contingent and building fund levies and so much of the tuition fund levy as is in excess of one mill, will exhaust the three mill limitation of section 5649-3a G. C., or with other levies applicable in the same district will cause the ten mill limitation of section 5649-2 G. C. to be exceeded; but if the electors of the district approve additional levies under sections 5649-4 and 5649-5 et seq. G. C., the levy provided for by section 7896-55 may be included within the levies that may be thus made outside of all limitations. Op. Atty. Gen. (1920), p. 560.

See Opinions of Attorney General No. 2754, (1921), cited under Sec. 7896-1.

SECTION 7896-56. The funds hereby created are the teachers' savings fund, the employers' accumulation fund, the annuity and pension reserve fund, the guarantee fund and the expense fund.

Various funds created; their uses and purposes.

(a) The teachers' savings fund shall be the fund in which shall be accumulated contributions from the compensation of contributors for the purchase of annuities.

The accumulated contributions of a contributor returned to him upon his withdrawal, or paid to his estate or designated beneficiary in the event of his death as provided in this act shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim the same as provided in this act shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a contributor shall be transferred from the teachers' savings fund to the annuity and pension reserve fund in the event of his retirement.

(b) The employers' accumulation fund shall be the fund in which shall be accumulated the reserves for the payment of all pensions payable as provided by this act. The amounts paid by employers on account of their normal contributions and their deficiency contributions shall be credited to the employers' accumulation fund.

Until the deficiency contribution shall have been discontinued, upon the retirement of a contributor, an amount equal to his annuity reserve shall be transferred from the employers' accumulation fund to the annuity and pension reserve fund and a pension equal to his annuity shall be paid therefrom. The remainder of any pension granted to him shall be paid directly from the employers' accumulation fund until the pension reserve thereon shall have been fully accumulated and the deficiency contribution shall have been discontinued. Thereupon, the full reserve on all pensions theretofore payable from the employers' accumulation fund shall be transferred from said fund to the annuity and pension reserve fund and said pensions shall thereafter be paid from the annuity and pension reserve fund. Upon the retirement of a contributor thereafter, the full amount of his pension reserve shall be transferred from the employers' accumulation fund to the annuity and pension reserve fund.



(c) The annuity and pension reserve fund shall be the fund from which shall be paid all pensions and annuities, or benefits in lieu thereof, on account of which reserves have been transferred from the teachers' savings fund or the employers' accumulation fund as provided in this act.

When the deficiency contributions have ceased to be payable, the full amount of the pension reserves on the pensions then directly payable from the employers' accumulation fund shall be transferred from said fund to the annuity and pension reserve fund. The annuity and pension reserve fund then and thereafter shall be the fund from which shall be paid all annuities and all pensions, and all benefits in lieu thereof, which are payable as provided in this act. Upon the retirement of a contributor, then and thereafter, his accumulated deductions shall be transferred from the teachers' savings fund to the annuity and pension reserve fund, and an amount equal to his full pension reserve shall be transferred from the employers' accumulation fund to the annuity and pension reserve fund.

Any teacher at the time of retirement shall be permitted to deposit in the annuity and pension reserve fund such amounts in multiples of one hundred dollars as such teacher shall desire and such teacher shall receive in return therefor an annuity having a reserve equal to the amount deposited, provided, that in no case shall a teacher have the right to purchase an annuity which together with the retirement allowance otherwise provided under the provisions of this act shall exceed such teacher's final average salary.

(d) A guarantee fund is hereby created to facilitate the crediting of uniform interest on the amounts in the various other funds with the exception of the expense fund, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest and dividends derived from the deposits and investments authorized by this act shall be paid into the guarantee fund.

The retirement board is hereby authorized to accept gifts and bequests. Any funds that may come into possession of the retirement system in this manner or which may be transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund created by this act or any other moneys whose disposition is not otherwise provided for herein shall be credited to the guarantee fund.

The interest allowed by the retirement board to each of the funds as provided in this act [G. C. §§ 7896-1 to 7896-63] shall be paid to such funds from the guarantee fund. Any deficit occurring in any fund which would not be automatically covered by the payments to that fund as otherwise provided by this act shall be met by payments from the guarantee fund to such fund. Should the amount in this fund in any year be insufficient to meet the amounts payable therefrom the amount of such deficiency with reg-

ular interest added thereto, shall be assessed by the retirement board in the succeeding years among the employers on the basis of the amount of the normal contributions paid by them, and the amounts so assessed shall be payable by such employers in the same manner and out of the same funds as their normal contributions are made and shall be credited to the guarantee fund.

(e) The expense fund shall be the fund from which shall be paid the expense of the administration of this act, exclusive of amounts payable as retirement allowances and as other benefits as provided in this act.

HISTORY.—108 v. Pt. I 195 (212), § 56.

The expense of administration, including the printing, paper, binding and supplies needed by the state teachers' retirement system, cannot be paid out of any state funds or appropriations beyond the initial appropriation provided in section 7896-58 G. C., but such costs are a charge against the expense fund of such retirement system and should be paid by the retirement board from the expense fund created under the provisions of section 7896-56 G. C., and if such expense fund or any of the other separate and distinct funds created are at any time depleted, and not sufficient to take care of any claims, the retirement board shall be governed by the mandate provided in 7896-56d and pay such deficit by transfers of moneys from the guarantee fund to the expense fund. Op. Atty. Gen. No. 2028, Apr. 27, 1921.

SECTION 7896-57. The retirement board shall estimate annually the amount required to defray such expense in the ensuing year. The retirement board shall apportion the amount of the expense so estimated in equal amounts among the contributors, provided that the amount so apportioned in any year shall not exceed one dollar per contributor. If the amount estimated to be required to meet the expenses of the retirement board is in excess of one dollar per contributor for the year, the amount of such excess shall be paid from the guarantee fund. If in the judgment of the retirement board, as evidenced by a resolution of that board recorded in its minutes, the amount in the guarantee fund exceeds the amount necessary to cover the ordinary requirement of that fund for a period of five years in the future, the board may transfer to the expense fund such excess amount not exceeding the entire amount required to cover the expenses as estimated for the year and the retirement board may then apportion the remaining amount required for the expense fund, if any, among the contributors as before mentioned.

Annual estimate to defray expense.

HISTORY.—108 v. Pt. I 195 (212), § 57.

SECTION 7896-58. The sum of ten thousand dollars is hereby appropriated from the moneys in the general revenue fund of the state of Ohio, not otherwise appropriated, for the expense of establishing, organizing and starting the operations of the retirement system and of establishing an office therefor. This sum shall be credited to the expense fund and expended only on order of the retirement board.

Appropriation for establishment of system.

HISTORY.—108 v. Pt. I 195 (212), § 58.

See Opinions of Attorney General No. 2028, (1921) cited under Sec. 7896-56.

Merger of  
local system  
with retire-  
ment; pro-  
cedure.

SECTION 7896-59. If a local district pension system votes to merge with the retirement system as provided in this act [G. C. §§ 7896-1 to 7896-63], the retirement board created by this act shall employ an actuary to value the assets and liabilities which will be taken over by the retirement system hereby created in the event of such merger. The actuary so employed shall be an actuary also approved by the employer in whose district the local district pension system is operated, and the expense of the valuation shall be paid by such employer. The actuary shall compute the present value of the liabilities on account of teachers in service in the local district pension system and on account of pensioners in the rolls of such local district pension system. He shall also compute the present value of the prospective amount to be received by reason of the payment of the normal contributions by the employer on behalf of the active teachers of such local system in the event of the contemplated merger. From the present value of the total liability for pensions on account of teachers in service in the local district pension system as previously determined, the actuary shall deduct the present value of the normal contributions. The amount remaining, together with the excess, if any, of the present value of all payments, necessary to continue the pensions of the pensioners of the local district pension system, over and above the amount of moneys and securities of such system, shall be known as the "accrued liability." Provided that no teacher, a member of a local district pension system at the time of the passage of this act, shall receive a lesser total retirement allowance upon retirement after merger of the local system with the state system than said teacher would have received upon retirement under the provisions of the local system.

HISTORY.—108 v. Pt. I 195 (213), § 59.

Deficiency  
contribution  
determined.

SECTION 7896-60. The actuary shall then determine the amount of a deficiency contribution which payable annually without regard to the payroll of contributors and increasing by three per centum of itself each year, until the year in which the deficiency contribution payable by other employers who had no local pension system may be expected to be discontinued, shall have a present value equal to this accrued liability.

HISTORY.—108 v. Pt. I 195 (213), § 60.

Transfer of  
moneys,  
credits, etc.,  
in event of  
merger.

SECTION 7896-61. The increasing contribution so determined by the actuary shall be paid by the employer instead of the deficiency contribution computed as otherwise provided by this act [G. C. §§ 7896-1 to 7896-63], anything to the contrary notwithstanding. In the event of merger, the moneys and securities to the credit of the local district pension system, not exceeding an aggregate amount equal to the present value of the payments to be made on account of all pensions to the pensioners on the rolls of the local district pension system, shall be transferred to the employ-



ers' accumulation fund and the pensions then payable by the local district pension system shall thereafter be paid from the employers' accumulation fund until the reserves on these pensions with the other pensions payable from the employers' accumulation fund shall have been accumulated and shall be transferred to the annuity and pension reserve fund, from which fund they shall thereafter be payable. The pensions of the active members of the local district pension system and of the new-entrants shall thereafter be payable as are the pensions of other members of the retirement system hereby created. The amount of the excess of the moneys and securities of the local district pension system over and above the present value of the payments to be made on account of all pensions to the pensioners of the rolls of the local district pension system shall be transferred to the teachers' savings fund and shall be credited pro rata to the active teachers of such local district pension system on the basis of the amounts of their previous contributions to the local district pension system, provided, however, that in case such method of distribution shall not be found practicable by the retirement board, the board may use such other method of apportionment as may seem fair and equitable to such board. The amount so credited in any case shall be considered as a part of the teacher's accumulated contributions for all purposes except in the case of retirement in which it shall be considered as an amount in excess of the teacher's accumulated contributions and shall be used in purchasing from the annuity and pension reserve fund an annuity, in addition to any other annuity or pension benefit otherwise provided by this act.

After the moneys and securities of any local district pension system shall have been transferred to the employers' accumulation fund or to the teachers' savings fund as hereinbefore provided, such local district pension system shall cease to exist.

HISTORY.—108 v. Pt. I 195 (213), § 61.

SECTION 7896-62. The right of a person to a pension, an annuity, or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this act [G. C. §§ 7896-1 to 7896-63], the various funds created by this act and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws or any other process of law whatsoever, and shall be unassignable except as in this act specifically provided.

Exemption of allowances from tax, execution, etc.

HISTORY.—108 v. Pt. I 195 (214), § 62.

SECTION 7896-63. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in

Penalty for false statement, record, etc.

any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor and shall upon conviction thereof be fined not less than ten nor more than one thousand dollars.

HISTORY.—108 v. Pt. I 195 (214), § 63.

## CHAPTER 27

### NORMAL SCHOOLS

#### SECTION.

7897. State normal schools; location.  
 7898. Maintenance, control, instruction.  
 7899. Local tax to aid such school.  
 7900. Question to be submitted to vote.  
 7901. When another election may be held.  
 7901-1. Establishment of normal school in Eastern Ohio.  
 7901-2. Commission to select location; report.  
 7901-3. Appointment of board of trustees.

#### SECTION.

- 7901-4. Organization of board of trustees; president and treasurer; appointment of teachers.  
 7901-5. Governor empowered to remove members of board and fill vacancies.  
 7901-6. General Assembly to provide for support of normal schools.

SECTION 7897. There are hereby created and established two state normal schools to be located as follows: One in connection with the Ohio university, at Athens, and one in connection with the Miami university, at Oxford.

State normal schools; location.

HISTORY.—R. S. § 4094-1; 95 v. 45, § 1.

The board of trustees of the Ohio university have no right under the statutes of Ohio to appropriate private property by condemnation proceedings for the needs of the university or of the state normal college. Op. Atty. Gen. (1913), p. 1023.

A professor in the state normal college at Athens, Ohio, holds merely an employment and he is eligible, therefore, to hold at the same time the office of member of the general assembly. Op. Atty. Gen. (1918), p. 415.

SECTION 7898. Boards of trustees of such universities shall maintain at their respective institutions a normal school which shall be co-ordinate with existing courses of instruction, and be maintained in such a state of efficiency as to provide proper theoretical and practical training for all students desiring to prepare themselves for the work of teaching. Such normal schools, in each case shall be under the general charge and management of the respective boards of trustees of such universities.

Maintenance, control, instruction.

HISTORY.—R. S. § 4094-2; 95 v. 45, § 2.

See Opinions of Attorney General (1913), p. 1023, cited under Sec. 7897.

SECTION 7899. The trustees of any township in this state, in which a normal school is organized and conducted, annually may levy a tax, not exceeding two mills on the dollar upon all the taxable property of the township for the purpose of aiding in the support of such normal school.

Local tax to aid such school.

HISTORY.—R. S. § 4094-7; 97 v. 389, § 1.

SECTION 7900. Before the tax can be levied, the question of making a levy for such purpose, shall be submitted to the qualified electors of the township, at a special or general election to be held therein, due notice of which must be given at least twenty days prior to the election, by pub-

Question to be submitted to vote.



lication in some newspaper of general circulation in the township. If the majority of the votes cast at such election upon the question of tax levy is in favor of levying a tax, then the trustees of the township thereafter annually shall make the levy and report it to the county auditor for collection as other taxes to be paid over, when collected, to the duly qualified and acting treasurer of the board of trustees of such normal school.

HISTORY.—R. S. § 4094-8; 97 v. 389, § 2.

When another election may be held.

SECTION 7901. At any time after four years from the date of such an election, another election may be petitioned for and shall be ordered by the trustees of the township, if the petition be signed by at least forty per cent of the qualified electors of the township.

HISTORY.—R. S. § 4094-9; 97 v. 389, § 3.

Establishment of normal school in eastern Ohio.

SECTION 7901-1. That the normal school system of the state of Ohio created and established by chapter ten of the General Code, be extended by the creation and establishment of one additional state normal school to be located in eastern Ohio, and to be so located as to afford the best opportunity possible for all the people to obtain the benefits and advantages to be derived from teachers trained both theoretically and practically. Such school shall not be located in any city or village which now has a college located therein.

HISTORY.—106 v. 490, § 1.

Commission to select location; report.

SECTION 7901-2. Within thirty days after the passage of this act [G. C. §§ 7901-1 to 7901-5] the governor shall appoint a commission composed of five persons, not more than three of whom shall be from any one political party, and no one of whom shall be personally or financially interested in any site determined upon by said commission. Said appointees shall constitute a commission with full power and authority to select suitable locations, lands, or lands and buildings and secure options on the same as said commission may find necessary for the establishment of said normal school and upon such terms and conditions as said commission may deem to be for the best interests of the state and submit a report of their proceedings to the governor for his approval on or before the first day of December, 1915. The members of said commission shall serve without compensation but shall be paid their reasonable and necessary expenses while in the discharge of their official duties and shall serve until the appointment and organization of the boards of trustees, hereinafter provided.

HISTORY.—106 v. 490, § 2.

Appointment of board of trustees.

SECTION 7901-3. As soon thereafter as the General Assembly shall appropriate a sufficient amount of money for the purchase of said site and the erection of suitable buildings thereon, the governor shall appoint by and with the advice and consent of the senate five competent persons

who shall constitute a board of trustees for the proposed normal school in the eastern portion of Ohio.

HISTORY.—106 v. 490 (491), § 3.

SECTION 7901-4. The board of trustees shall organize immediately after its appointment by the election from its members, of a president, a secretary and a treasurer. The treasurer, before entering upon the discharge of his duties shall give bond to the state of Ohio for the faithful performance of his duties and the proper accounting for all moneys coming into his care. The amount of said bond shall be determined by the trustees, but shall not be for less sum than the estimated amount which may come into his control at any time. Said bond shall be approved by the attorney general.

Organization;  
bond of treasurer.

Before adopting plans for the buildings of said normal school the board shall elect a president of known ability for the school under its control, who shall have advisory power in determining said plans. In planning said buildings, ample provisions shall be made for the establishment of a well equipped department for the preparation of teachers in the subject of agriculture.

Selection of president.

The board of trustees in connection with the president of the normal school shall elect and appoint an able and efficient corps of instructors for the said school, provide a suitable course of study for the theoretical and practical training of students who desire to prepare themselves for the work of teaching, fix rates of tuition and provide proper equipment.

Corps of teachers.

Said board shall proceed without unnecessary delay to purchase said selected sites, lands and buildings, as the case may be, and erect thereon suitable and substantial buildings, or enlarge, reconstruct and properly repair in a suitable and substantial manner such building or buildings, if any there be, and complete said buildings as soon as conditions will permit. And said board of trustees shall do any and all things necessary for the proper maintenance and successful and continuous operation of said normal school and may receive donations of lands and moneys for the purpose of said normal school.

Purchase of site and erection of buildings.

The governor when appointing said board of trustees shall designate one member of the board to serve one year, one to serve two years, and one to serve three years, one to serve four years and one to serve five years and thereafter one trustee shall be appointed annually for five years for the control and management of said normal school. They shall serve without compensation other than their reasonable and necessary expenses while engaged in the discharge of their official duties. Not more than three members of the board shall be selected from any one political party.

Terms of members.

HISTORY.—106 v. 490 (491), § 4.

Removals and  
vacancies.

SECTION 7901-5. The governor shall have power to remove for just cause any appointees herein named, when, in his judgment, he deems it necessary, and shall fill all vacancies that may occur.

HISTORY.—106 v. 490 (492), § 5.

[Support of.]

[SECTION 7901-6.] The said normal school shall be supported by such sums and in such manner as the General Assembly may from time to time provide.

HISTORY.—106 v. 490 (492), § 6.

Money never appropriated by G. A. to carry out provision of above act.

## AN ACT

To provide for the appointment of a commission to establish two normal schools and to provide for the maintenance thereof.

*Be it enacted by the General Assembly of the State of Ohio:*

Normal  
schools.

SECTION 1. That the normal school system of the state of Ohio created and established by chapter ten of the General Code, be extended by the creation and establishment of two additional state normal schools, one in north-eastern Ohio and one in northwestern Ohio, to be so located as to afford the best opportunity possible for all the people to obtain the benefits and advantages to be derived from teachers trained both theoretically and practically. Neither of such schools shall be located in any city or village which now has a college located therein. 101 V. 320.

Normal  
school  
commission.

SECTION 2. Within thirty days after the passage of this act the governor shall appoint a commission composed of five persons, not more than three of whom shall be from any one of political party, and no one of whom shall be personally or financially interested in any site determined upon by said commission. Said appointees shall constitute a commission with full power and authority to select suitable locations, lands, or lands and buildings and secure options on the same as said commission may find necessary for the establishment of said normal schools and upon such terms and conditions as said commission may deem to be for the best interests of the state and submit a report of their proceedings to the governor for his approval on or before the first day of December, 1910. The members of said commission shall serve without compensation but shall be paid their reasonable and necessary expenses while in the discharge of their official duties and shall serve until the appointment and organization of the boards of trustees, hereinafter provided. 101 V. 320.

Board of  
trustees (Kent  
and Bowling  
Green).

SECTION 3. As soon thereafter as the general assembly shall appropriate a sufficient amount of money for the purchase of said sites and the erection of suitable buildings thereon, the governor shall appoint by and with the advice and consent of the senate five competent persons who shall constitute a board of trustees for the proposed normal



school in the northeastern portion of Ohio and five other competent persons who shall constitute a board of trustees for the proposed normal school in the northwestern portion of Ohio.

SECTION 4. Each board of trustees shall organize immediately after its appointment by the election from its members of a president, a secretary and a treasurer. The treasurer, before entering upon the discharge of his duties shall give bond to the state of Ohio for the faithful performance of his duties, and the proper accounting for all moneys coming into his care. The amount of said bond shall be determined by the trustees, but shall not be for a less sum than the estimated amount which may come into his control at any one time. Said bond shall be approved by the attorney general.

Organization  
of board.

Before adopting plans for the buildings of said normal schools each board shall elect a president of known ability for the school under its control, who shall have advisory power in determining said plans. In planning said buildings, ample provisions shall be made for the establishment of a well equipped department for the preparation of teachers in the subject of agriculture.

The boards of trustees in connection with the presidents of the normal schools shall select and appoint an able and efficient corps of instructors for the said schools, provide a suitable course of study for the theoretical and practical training of students who desire to prepare themselves for the work of teaching, fix rates of tuition and provide proper equipment

Teachers and  
course of  
study.

Said boards shall proceed without unnecessary delay to purchase said selected sites, lands and buildings, as the case may be, and erect thereon suitable and substantial buildings or enlarge, reconstruct and properly repair in a suitable and substantial manner such building or buildings, if any there be, and complete said buildings as soon as conditions will permit. And said board of trustees shall do any and all things necessary for the proper maintenance and successful and continuous operation of said normal schools and may receive donations of lands and moneys for the purpose of said normal schools.

Buildings.

The governor when appointing said board of trustees shall designate one member of each board to serve one year, one to serve two years, and one to serve three years, one to serve four years and one to serve five years and thereafter one trustee for each board shall be appointed annually for five years for the control and management of said normal schools. They shall serve without compensation other than their reasonable and necessary expenses while engaged in the discharge of their official duties. Not more than three members of each board shall be selected from any one political party. 101 V. 320.

Terms of  
trustees.

Removal of  
appointees.

SECTION 5. The governor shall have power to remove for just cause any appointees herein named, when, in his judgment, he deems it necessary, and shall fill all vacancies that may occur.

SECTION 6. The said normal schools shall be supported by such sums and in such manner as the general assembly may from time to time provide. 101 V. 320.

Passed May 10th, 1910.

Approved May 19th, 1910.

The State Normal Schools at Bowling Green and Kent were established and are operating under the provisions of the above act.

# CHAPTER 28

## COLLEGES AND UNIVERSITIES

### MUNICIPAL UNIVERSITIES

#### MUNICIPAL UNIVERSITIES

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Administration, management.

SECTION 4001. In any municipal corporation having a university supported in whole or in part by municipal taxation all the authority, powers and control vested in or belonging to such corporation with respect to the management of the estate, property and funds given, transferred, covenanted or pledged to such corporation in trust or otherwise for such university, as well as the government, conduct and control of such university shall be vested in and exercised by a board of directors consisting of nine electors of the municipal corporation.

HISTORY.—96 v. 91, § 217; R. S. Bates, § 1536-933.

It is not necessary for that portion of the funds of the municipal university of the city of Toledo, raised by taxation under provision of section 7908, G. C., to be appropriated by the council of said city under provision of section 5649-3d, G. C. The provisions of section 4001, G. C., taken in connection with the provisions of section 7902, et seq. of the General Code, and the provisions of sections 129 and 130 of the charter of said city of Toledo, applicable to the administration of said university funds, vest in the board of directors, created as provided in said section 4001, et seq., of the General Code, the administration and full control of said funds, the same to be paid out by the city treasurer upon the order of said board of directors and the warrant of the city auditor (director of finance of said city) under provision of the latter part of section 7909 G. C. Op. Atty. Gen. (1916), p. 1207.

See Opinions of Attorney General (1918), p. 568, cited under Sec. 7908.

Directors, how appointed.

SECTION 4002. Such directors shall be appointed by the mayor of the municipal corporation, three for a term of two years, three for a term of four years and three for a term of six years, and thereafter as the terms expire the mayor shall appoint three directors for a term of six years each and shall fill all vacancies in the board. Such board

of directors shall be known as "The Board of Directors of .....University" (filling out blank with the name of the university).

HISTORY.—96 v. 91, § 217; R. S. Bates, § 1536-933.

See Opinions of Attorney General (1916), p. 1207, cited under Sec. 4001.

SECTION 4003. Such directors shall serve without compensation and shall have all the powers and perform all the duties conferred or required by law in the government of such university, and the execution of any trust with respect thereto imposed upon the municipal corporation.

Powers and duties.

HISTORY.—96 v. 91, § 217; R. S. Bates, § 1536-933.

See Opinions of Attorney General (1916), p. 1207, cited under Sec. 4001.

SECTION 4020. The council of each city may levy and collect a tax not to exceed one-quarter of one mill on each dollar of the taxable property of the municipality each year, and pay it to a private corporation or association maintaining and furnishing a free museum or gallery for the exhibition of paintings, sculpture and other works of art, and, in connection therewith, an academy for advancing, improving and promoting painting, sculpture, drawing, architecture and other fine arts, and furnishing instruction therein by lectures and otherwise, for the benefit of the inhabitants of the municipality, as and for compensation for the use and maintenance thereof. Without change or interference in the organization of such corporation or association, the council shall require the treasurer of such corporation or association to make an annual financial report, setting forth all the money and property which has come into its hands during the preceding year, and its disposition thereof, together with recommendation as to future necessities.

Compensation to private company for maintaining free art gallery.

HISTORY.—98 v. 146, § 218a; R. S. Bates, § 1536-934a.

SECTION 7902. As to all matters not herein or otherwise provided by law, the board of directors of a municipal university, college or institution, shall have all the authority, power and control vested in or belonging to such municipal corporation as to the sale, lease, management and control of the estate, property and funds, given, transferred, covenanted or pledged to such corporation for the trusts and purposes relating thereto and the government, conduct and control of such university, college or institution. It may, unless prohibited by the terms of the trust under which such estate or property is held, sell, or lease perpetually or for any less period and with or without a privilege of purchase at a fixed price, any part or the whole of any such estate or property, and on sale, or on an election to purchase under a lease containing a privilege to purchase as aforesaid, convey or transfer such estate or property, and if heretofore any lease with a privilege of purchase at a fixed price shall have been executed and delivered by said board, or any board preceding it in office, for any part or the whole of

Municipal university; powers of directors.

Deeds.

any such estate or property, said board shall on an election to purchase under such lease convey such premises. All instruments affecting real estate shall be executed on behalf of the board by such of its officers as it shall designate by resolution, authorizing the execution of such instrument and all deeds so executed shall convey all the title of said board and of such municipal corporation in and to the real estate so conveyed; it may appoint a clerk and all agents proper and necessary for the care and administration of the trust property and the collection of the income, rents and profits thereof; appoint the president, secretaries, professors, tutors, instructors, agents and servants, necessary and proper for such university, college or institution and fix their compensation; provide all the necessary buildings, books, apparatus, means and appliances, and pass such by-laws, rules and regulations concerning the president, secretaries, professors, tutors, instructors, agents and servants, and the admission, government and tuition of students as it deems wise and proper, and by suitable by-laws, delegate and commit the admission, government, management and control of the students, courses of studies, discipline and other internal affairs of such university, college or institution to a faculty which the board appoints from among the professors.

By-laws.

HISTORY.—R. S. § 4099; 67 v. 86, § 3; 97 v. 542; 101 v. 237.

This and the following provisions are constitutional: *State, ex rel., v. Toledo*, 13 O. C. D. 327.

The erection of a house for the president of the university of Cincinnati was held to be a proper exercise of university function: *Cincinnati v. Jones*, 16 O. D. (N. P.) 343, 3 O. L. R. 455 [affirmed, *Cincinnati v. Jones*, 18 O. C. D. 210].

The courts cannot control the conduct of the board of directors in matters which are entrusted by law to their discretion, upon the ground that they are acting unwisely: *State, ex rel., v. Schauss*, 3 O. C. C. (N. S.) 388, 13 O. C. D. 283.

A board of directors which is appointed under this section, or which acts under G. C. § 7921, is not a corporation, but is a legal body upon which certain powers have been conferred by statute. A conveyance to a municipal corporation of trust property for the purposes for which it was ordinarily dedicated does not deprive the board of the powers and interests conferred upon them by the original donation: *State, ex rel., v. Toledo*, 3 O. C. C. (N. S.) 468, 13 O. C. D. 327.

The city of Cincinnati has power to take and hold property in trust for educational purposes: *Perin v. Carey*, 24 How. 465.

See Opinions of Attorney General (1916), p. 1207, cited under Sec. 4001.

City solicitor  
to act as  
attorney.

SECTION 7903. When requested so to do by resolution of such board, the solicitor of such municipal corporation shall prosecute and defend, as the case may be, for and in behalf of the corporation, all complaints, suits and controversies in which the corporation or such board is a party, and which relate to any property, funds, trusts, rights, claims, estate or affairs under the control or direction of the board, or which, in any manner, relate to the conduct or government of such university, college or institution.

HISTORY.—R. S. § 4099; 67 v. 86, § 3; 97 v. 542.



SECTION 7904. The board of directors of such university, college or institution, upon the recommendation of the faculty thereof, may confer such degrees and honors as are customary in universities and colleges in the United States, and such others as with reference to the course of studies and attainments of the graduates in special departments it deems proper.

When board  
may confer  
degrees.

HISTORY.—R. S. § 4102; 67 v. 86, § 4; 97 v. 544.

SECTION 7905. A university supported in whole or in part by municipal taxation, is defined as an assemblage of colleges united, under one organization or management, affording instruction in the arts, sciences and the learned professions, and conferring degrees.

University  
defined.

HISTORY.—R. S. § 4102; 67 v. 86, § 4; 97 v. 544.

The word "university" in G. C. § 4001 is used in its popular and not in its technical sense: Waddick v. Merrill, 5 O. C. C. (N. S.) 103, 16 O. C. D. 437.

The definition of a "university" given in this section can have no bearing on the question of control of a school established by a private donor to carry out his purposes in regard to education, and endowed by his property and the property of others given for the same purpose. The denominating of such a school as a "university" does not deprive it of the protection of the constitution of the state and the guaranty that all private property shall ever be held inviolate, notwithstanding it has not yet attained to the full scope of a university: State, ex rel., v. Toledo, 5 O. C. C. (N. S.) 277, 16 O. C. D. 628.

Although not, technically speaking, a "university" within the meaning of this section, the Toledo university is governed by the laws which relate to municipal universities: Waddick v. Merrill, 5 O. C. C. (N. S.) 103, 16 O. C. D. 437.

SECTION 7906. The council of any such municipal corporation may set apart, or appropriate as a site for the buildings and grounds of such a university, college or institution, public grounds of the city not especially appropriated or dedicated by ordinance to any other use, any other law to the contrary notwithstanding; and the board of education of such a municipal corporation also, for a like purpose may set apart, convey or lease for a term of years, any grounds or buildings owned or controlled by such board.

Council may  
provide site  
for municipal  
university.

HISTORY.—R. S. § 4103; 67 v. 86, § 5; 82 v. 121; 89 v. 251; 97 v. 544.

This section is constitutional: State, ex rel., v. Toledo, 3 O. C. C. (N. S.) 463, 13 O. C. D. 327.

A municipal corporation may set apart public ground for a municipal university which has been created by private endowment, although such ground has been paid for out of the funds raised by general taxation: Cincinnati v. McMicken, 6 O. C. C. 188, 3 O. C. D. 409 [affirmed, without report, McMicken v. Cincinnati, 29 Bull. 168].

The word "university" in G. C. § 4001 is used in its popular and not in its technical sense: Waddick v. Merrill, 5 O. C. C. (N. S.) 103, 16 O. C. D. 437.

SECTION 7907. Any grant for the use of such grounds, or buildings heretofore or hereafter made by any council or board of education, may be modified, changed or extended as to the time when it shall take effect and be in force, or otherwise, by agreement between such council, or

How such  
grant changed.

board of education, and the board of directors of such university, college or institution. Such council shall be taken and held to be the representative of such municipal corporation vested with the title, right of possession and entire control of such property for the purposes of a new grant.

HISTORY.—R. S. § 4103; 67 v. 86, § 5; 82 v. 121; 89 v. 251; 97 v. 544.

Physical culture is included as a necessary university purpose, and inclosure of part of the university grounds as an athletic field is a necessary and proper use thereof: *University Directors v. Cincinnati*, 1 O. N. P. (N. S.) 105, 13 O. D. (N. P.) 741.

#### Tax levies.

SECTION 7908. The council annually may assess and levy taxes on all the taxable property of such municipal corporation to the amount of five-tenths of one mill on the dollar valuation thereof, less the amount necessary to be levied to pay the interest and sinking fund on all bonds issued for the university subsequent to June 1, 1910, to be applied by such board to the support of such university, college or institution and also levy and assess annually five one-hundredths of one mill on the dollar valuation thereof, for the establishment and maintenance of an astronomical observatory, or for other scientific purposes, to be determined by the board of directors and to be used in connection with such university, college or institution, the proceeds of which shall be applied by the board of directors for such purposes exclusively. But such taxes shall only be levied and assessed when the chief work of such university, college or institution is the maintenance of courses of instruction, in advance of, or supplementary to, the instruction authorized to be maintained in high schools by boards of education.

The above tax levies shall not be subject to any limitations of rates of taxation or maximum rates provided by law, except the limitations herein provided, and the further exception that the combined maximum rate for all taxes levied in any year in any city or other tax district shall not exceed fifteen mills.

HISTORY.—R. S. § 4104; 67 v. 86, § 6; 75 v. 133, § 1; 90 v. 150; 94 v. 399; 95 v. 548; 97 v. 544; 98 v. 128; 103 v. 472.

This section is constitutional: *State, ex rel., v. Toledo*, 3 O. C. C. (N. S.) 468, 13 O. C. D. 327.

The erection of a dwelling house for the president is a proper expenditure of university funds: *Cincinnati v. Jones*, 16 O. D. (N. P.) 343, 3 O. L. R. 455.

A manual training and polytechnic school which is founded upon private donation accepted under G. C. § 7915, et seq., is not a public school in the sense that high schools and grammar schools are public schools, although tuition therein is free: *State, ex rel., v. Schauss*, 3 O. C. C. (N. S.) 388, O. C. D. 283.

The city auditor of a city maintaining a municipal university exercises the same function respecting the expenditures of appropriations from levies for the support of such university or for the maintenance of astronomical observatory, or for other scientific purposes, as he does over the expenditures of any other municipal appropriation.

The council of such city may make the second levy mentioned in section 7908 G. C. exclusively for the maintenance of the observatory, exclusively for other scientific purposes pertaining to

the university, or jointly for both. When made in any of these forms the proceeds of the levy should be appropriated generally, as the directors of the university have wide, though not absolute, discretion as to the expenditure of the funds so levied. Op. Atty. Gen. (1918), p. 711.

The directors of a municipal university must submit an estimate of the needs of their institution just as the heads of other departments in the city government must submit them, to the mayor, as a part of the process of making up the municipal budget. The mayor may reduce any item therein; the council when it makes the levy may, if necessary, reduce such item; and the budget commission in adjusting the levies may likewise reduce any item in the budget of such university, if necessary to enforce the fifteen mill limitation which alone applies to such levy. Op. Atty. Gen. (1918), p. 568.

See Opinions of Attorney General (1916), p. 1207, cited under Sec. 4001.

A tax levy made in pursuance of section 7908 G. C. for the benefit of a municipal university, and for the purpose of an "Observatory and other scientific purposes of the University" is in compliance with said section, and proceeds of such a levy may be expended by the board of directors of the university in a manner deemed applicable by them when limited to the exclusive purposes for which such fund was provided. Op. Atty. Gen. No. 2953, Mar. 28, 1922.

SECTION 7909. Such levies shall be made by the council at the time, and in like manner as other levies for other municipal purposes, and must be certified by it and placed upon the tax duplicate as other municipal levies. The funds of any such university, college or institution shall be paid out by the treasurer upon the order of the board of directors and the warrant of the auditor.

When levy  
to be made.

HISTORY.—R. S. § 4104; 67 v. 86, § 6; 75 v. 133, § 1; 90 v. 150; 94 v. 399; 95 v. 548; 97 v. 544; 98 v. 128.

See Opinions of Attorney General as follows:

(1918), p. 711, cited under Sec. 7908.

(1918), p. 568, cited under Sec. 7908.

(1916), p. 1207, cited under Sec. 4001.

SECTION 7910. Any municipal corporation having a university supported in whole or in part by municipal taxation, may issue bonds for the erection of additional buildings or the completion of buildings not completed, for such municipal university, and for the equipment thereof.

Municipal  
university.

HISTORY.—99 v. 133, § 1.

Bonds issued by a municipal corporation under authority of sections 7910 et seq., General Code, are not subject to the 1, 2½ and 5 per cent limitations of the Longworth act. Op. Atty. Gen. (1918), p. 246.

See Opinions of Attorney General (1916), p. 1207, cited under Sec. 4001.

SECTION 7911. Such bonds may be issued under ordinance of the council of such municipality with the approval of the mayor, but only upon the receipt of a certified resolution from the board of directors of such university of the necessity of such issue. The resolution and ordinance must specify the amount of the issue, the denomination of bonds,

Issue of  
bonds.



their rate of interest, their dates, and the times of their maturity.

HISTORY.—99 v. 133, § 2.

For the offense of knowingly making a false transcript of proceedings with reference to the issue of bonds, see G. C. § 2295-4.

See Opinions of Attorney General as follows:

(1918), p. 246, cited under Sec. 7910.

(1916), p. 1207, cited under Sec. 4001.

Disposal  
of bonds.

SECTION 7912. The bonds so issued shall be sold according to the provisions of law for the sale of municipal bonds, and the proceeds thereof, excepting the premiums and accrued interest, shall be placed in the treasury of such municipality and be used only for the purpose of erecting or completing and equipping such additional buildings as may have been specified in the resolution and ordinances calling for their issue.

HISTORY.—99 v. 133, § 3.

See Opinions of Attorney General (1918), p. 246, cited under Sec. 7910.

Power and  
control vested  
in directors.

SECTION 7913. In the use of such fund for such purpose, all power and control shall be vested in the board of directors of the municipal university. Such board shall make any contracts necessary for the erection or completion of the buildings specified, and the equipment thereof; supervise their erection, completion and equipment, and issue proper vouchers for the payment out of such fund of moneys due under such contracts, and for any other expenses connected with the erection, completion, and equipment of such buildings. The amount of premium and accrued interest arising from the sale of the bonds shall be paid into the sinking fund.

HISTORY.—99 v. 133, § 3.

The construction of a house as a residence for the president is not a misappropriation of university funds: *Cincinnati v. Jones*, 16 O. D. (N. P.) 343, 3 O. L. R. 455.

See Opinions of Attorney General (1916), p. 1207, cited under Sec. 4001.

Duties of  
trustees of  
sinking fund.

SECTION 7914. The trustees of the sinking fund of any municipality issuing bonds under the above authority, annually shall levy a tax sufficient to pay the interest, and to provide a sinking fund for the final redemption of the bonds at maturity.

HISTORY.—99 v. 134, § 4.

Board of di-  
rectors of edu-  
cational insti-  
tution may  
accept educa-  
tional trusts.

SECTION 7915. The board of directors of a university, college or other educational institution of any municipal corporation, in the name and on behalf of such corporation, may accept and take any property or funds heretofore or hereafter given to such corporation for the purpose of founding, maintaining or aiding a university, college or institution for the promotion of education, and upon such

terms, conditions and trusts consistent with law as such board deems expedient and proper for that end.

HISTORY.—R. S. § 4095; 67 v. 86, § 1; 92 v. 358; 97 v. 541.

See Sec. 7905.

This section is constitutional: State, ex rel., v. Toledo, 3 O. C. C. (N. S.) 468, 13 O. C. D. 327.

A manual training and polytechnic school which is founded upon private donation accepted under this section, is not a public school in the sense that high schools and grammar schools are public schools: State, ex rel., v. Schauss, 3 O. C. C. (N. S.) 388, 13 O. C. D. 283.

The city of Cincinnati has power to take and hold property in trust for educational purposes: Perin v. Carey, 24 How. 265.

A college of dental surgery has no power to agree to pay interest upon its shares of stock: Ohio College of Dental Surgery v. Rosenthal, 45 O. S. 183.

A college or university which does not come within the letter of the statute will be held to be within its spirit, especially if subscriptions thereto have been made and accepted and liabilities have been incurred thereon: Ohio Wesleyan Female College v. Love's Executor, 16 O. S. 20; Irvin v. Lombard University, 56 O. S. 9.

The property of the Cincinnati college was held to be private property, so that the legislature could not give such property to the university of Cincinnati: State, ex rel., v. Neff, 52 O. S. 375.

If a subscription is made to a college or university, and in reliance thereon, and in order to carry out the object thereof, such college or university incurs liabilities or makes expenditures, such liabilities are expenditures and furnish a sufficient consideration to support such promise: Ohio Wesleyan Female College v. Love's Executor, 16 O. S. 20; Irwin v. Lombard University, 56 O. S. 9.

A subscription which is made for the purpose of paying the pre-existing debts of a college or university is not supported by sufficient consideration, since such college or university cannot have made expenditures or incurred liabilities in reliance thereon: Johnson v. Otterbein University, 41 O. S. 527.

SECTION 7915-I. All such property, personal or mixed, or real property located within the county in which an university, college or other educational institution of any municipal corporation is located, heretofore or hereafter so given to or received by the board of directors of a university, college or other educational institution of any municipal corporation, the rents, issues, profits and income of which are used exclusively for the use, endowment or support of a university, college or other educational institution of any municipal corporation, shall be exempted from taxation so long as such property or the rents, issues, profits or income thereof is used for and exclusively applied to the endowment or support of such university, college or other educational institution of such municipal corporation.

Exemption  
from taxation.

HISTORY.—102 v. 32.

SECTION 7916. For the further endowment, maintenance and aid of any such university, college or institution heretofore or hereafter founded, the board of directors thereof, in the name and in behalf of such municipal corporation may accept and take as trustee and in trust for the purposes aforesaid any estate, property or funds which

How trust  
funds to  
be applied.

may have been or may be lawfully transferred to the municipal corporation for such use by any person, persons or body corporate having them, or any annuity or endowment in the nature of income which may be covenanted or pledged to the municipal corporation, towards such use by any person, persons or body corporate. Any person, persons or body corporate having and holding any estate, property or funds in trust or applicable for the promotion of education, or the advancement of any of the arts or sciences, may convey, assign and deliver these to such municipal corporation as trustee in his, their or its place, or covenant or pledge its income or any part thereof to it. Such estate, property, funds or income shall be held and applied by such municipal corporation in trust for the further endowment, maintenance and aid of such university, college or institution, in accordance nevertheless with the terms and true intent of any trust or condition upon which they originally were given or held.

HISTORY.—R. S. § 4096; 67 v. 86, § 2; 92 v. 358; 97 v. 542.

See Sec. 7905.

Under this section the board of directors has power to accept or to reject a gift; but if such board decides to accept a gift, it can accept it only in accordance with the terms and conditions upon which such gift is offered: State, ex rel., v. Schauss, 3 O. C. C. (N. S.) 388, 13 O. C. D. 283.

Trusteeship  
to vest in  
city, etc.

SECTION 7917. Upon such transfer and the acceptance thereof the municipal corporation and its successors, as trustees shall become and be perpetually obligated and held to observe and execute such trust in all respects according to any other or further terms or conditions lawfully agreed upon at the time of such transfer and acceptance. Any court having jurisdiction of the appointment of trustees of such trust for educational purposes, in a proceeding therefor, duly instituted and had, may, with the consent of its council, appoint and constitute such municipal corporation, trustee of the estate, property and funds so transferred to it, and dispense with bond and surety upon the part of the municipality for the performance of such trust, unless that is required by the original terms or conditions thereof, and upon the due transfer and acceptance of such trust shall release and fully discharge the trustee or trustees so transferring it. Any acceptance or acceptances by such municipal corporation of any or all property, funds, rights, trust estate or trusts heretofore given, granted, assigned, or otherwise conveyed or transferred to or bestowed upon such a municipal corporation or to or upon such a university, college or institution in good faith, and which are still held and retained by such municipality or such a university, college or institution, shall be held and deemed to be valid and binding as to all parties.

HISTORY.—R. S. § 4097; 67 v. 86, § 2; 97 v. 542.

See G. C. § 7902.



SECTION 7918. The accounts of such trust estate, property and funds, and of the income and expenditure thereof, shall be kept by the auditor of such municipal corporation entirely distinct from all other accounts or affairs of the municipality and the moneys must be kept by the treasurer of the municipal corporation distinct from other moneys. Such board of directors, at all times, must confine their disbursements for current expenses within the income of the trust, estate, property and funds, and annually shall report to the mayor and council of such municipality a full statement of the accounts of administration of such trust and other funds.

Account of receipts and expenditures of endowment fund.

HISTORY.—R. S. § 4101; 67 v. 86, § 3; 80 v. 86; 97 v. 543.  
See G. C. § 7902.

SECTION 7919. Such board may invest any part of the funds belonging to or set apart for the use of such university, college or institution or to any department thereof, as it from time to time deems proper in bonds of the United States, or of the state of Ohio, or of any municipal corporation of this state, or any county, or school district herein, or in any other bonds or first mortgage securities approved by it, and may use any funds, including those arising from sales of any property sold under section seventy-nine hundred and two hereof, (provided the terms of the trust do not prohibit such use), in the improvement of any real or leasehold estate belonging either to the particular trust of which the property sold was part or to any other trust under its control and management; or in the improvement of any real or leasehold estate set apart for the use of such university, college or institution.

Investments.

HISTORY.—R. S. § 4101; 67 v. 86, § 3; 80 v. 86; 97 v. 543; 101 v. 237.  
See G. C. § 7902.

SECTION 7920. Citizens of such municipality shall not be charged for instruction in the academic department, except in professional courses therein. Such board of directors may charge fees to students in other departments and to students in professional courses in the academic department, and from time to time may make such university, college or institution free in any or all of its departments to citizens of the county in which it is located. The board of directors may receive other students on such terms as to tuition or otherwise as they see fit.

Citizens not to be charged for admission of children.

HISTORY.—R. S. § 4100; 67 v. 86, § 3; 92 v. 359; 97 v. 543.  
See G. C. § 7902.

For a discussion in detail of the question, who are citizens within the meaning of this section, so as to be entitled to free tuition, see *State, ex rel., v. Kuhn*, 8 O. N. P. 197, 11 O. D. (N. P.) 321.

SECTION 7921. The custody, management and administration of any and all estate or funds, given or transferred in trust to any municipality for the promotion of education, and accepted by the council thereof, and any institution for the promotion of education heretofore or hereafter so

Board of education to have control and management of property held in trust for educational purposes.

founded other than a university as defined in this chapter, shall be committed to, and exercised by, the board of education of the school district including such municipality. Such board of education shall be held the representative and trustee of such municipality in the management and control of such estates and funds so held in trust and in the administration of such institution, excepting always funds and estates held by any municipality which are used to maintain a university as heretofore defined.

HISTORY.—R. S. § 4105; 70 v. 117, § 1; 94 v. 241; 95 v. 519; 97 v. 545. See G. C. § 7902.

For the constitutionality of earlier forms of this section, see *State, ex rel., v. Toledo*, 5 O. C. C. (N. S.) 277, 16 O. C. D. 628.

For the validity of this section, see *State, ex rel., v. Toledo*, 3 O. C. C. (N. S.) 468, 13 O. C. D. 327.

This section was held to be unconstitutional in so far as it changes the plans and purpose of the terms of the original trust created by the donors and accepted by the municipal council: *Toledo v. Seiders*, 56 Bull. 77 [affirmed, without report, *Seiders v. Toledo*, 83 O. S. 495].

The provision of this section, that the administration of all estates or funds transferred to any municipality for educational purposes shall be committed to the board of education, is unconstitutional in the taking of property without due process of law and the impairment of contract obligations in so far as it changes the plans and purpose of the terms of the original trust created by donors and accepted by the municipal council of the city of Toledo: *Toledo v. Seiders*, 15 O. C. C. (N. S.) 468, 23 O. C. D. 613, 58 Bull. 85 (Ed.) [affirmed, without opinion, *Seiders v. Toledo*, 83 O. S. 495].

#### Tax levy.

SECTION 7922. For the uses and purposes of such board of education in administering such trusts, the council of such municipality annually may levy taxes on all the taxable property of such municipal corporation to the amount of three-tenths of one mill on the dollar valuation thereof.

HISTORY.—R. S. § 4105; 70 v. 117, § 1; 94 v. 241; 95 v. 519; 97 v. 545. See G. C. § 7902.

The provisions of the municipal code with reference to municipal universities (see G. C. § 4001, et seq.) do not repeal the power of taxation given by this section: *Waddick v. Merrill*, 5 O. C. C. (N. S.) 103, 16 O. C. D. 437.

#### STATE UNIVERSITIES GENERALLY

Declaration of policy of state with respect to Ohio state university, Ohio university and Miami university.

SECTION 7923. Inasmuch as it is deemed desirable for this state to determine its policy in regard to the support of institutions of higher learning, and further desirable that it adopt a distinct and fixed policy in regard to universities and colleges for all time to come so that the policy of the state with reference to the Ohio State University, the Miami university and the Ohio university shall be determined and made definite and to the end that the state may build up one university worthy of it, as now begun at the Ohio State University, and also to fix such a policy as will provide support for the Miami and Ohio universities as colleges of liberal arts, but not to include technical

or graduate instruction, aside from the usual graduate work for the degree of master of arts, and to determine definitely for all time that the Miami university and the Ohio university shall be no greater charge on the state so far as university purposes are concerned than herein provided for; therefore this subdivision of this chapter is passed to set forth the policy, to-wit: That in the future no representative of the Miami university or of the Ohio university or of the Ohio State university shall violate or attempt to violate this policy herein enacted into law as a policy for the support of higher education and as a guide for future general assemblies of the state of Ohio.

HISTORY.—R. S. § 4105a; 98 v. 309, §1.

SECTION 7930. No provision of this sub-division of this chapter shall prevent the boards of trustees of the Ohio State university, the Miami university, the Ohio university or the State Normal school at the Ohio university or at the Miami university from charging reasonable tuition for the attendance of pupils of either of such institutions from students who are non-residents of the state of Ohio.

Tuition.

HISTORY.—R. S. § 4105h; 98 v. 312, §8.

SECTION 7930-1. Any citizen of this state who has resided within the state for one year and who was in the active service of the United States as soldier, sailor, nurse or marine between April 6, 1917 and November 11, 1918 and who has been honorably discharged from such service, shall be admitted to any school, college or university which receives state funds in support thereof, without being required to pay any tuition or matriculation fee, but shall not be relieved for the payment of laboratory or similar fees.

Who exempt from payment of tuition in state supported schools.

HISTORY.—109 v. 356.

SECTION 7931. The expenditure of all moneys under the provisions of this sub-division of this chapter or for the purposes of carrying them out, raised or secured from any source whatsoever, shall be subject to the inspection of the state bureau of public accounting, the cost thereof to be paid by the university or college inspected at the cost as provided by law.

Inspection of accounts.

HISTORY.—R. S. § 4105i; 98 v. 312, § 9.

See Opinions of Attorney General (1914), p. 61, cited under Sec. 24.

#### OHIO UNIVERSITY

SECTION 7931-1. The body politic and corporate by the name and style of "The President and Trustees of the Ohio University" now in the university instituted and established in the village of Athens by the name and style of "The Ohio University" shall hereafter consist of a board of trustees composed of the director of education and seven members, at least four of whom shall be graduates of Ohio university, to be appointed by the governor, by and with the advice and consent of the senate; but all persons now

Appointment of trustees.



serving as members of said body politic and corporate may continue to serve as members thereof; and so long as they continue to serve such body politic and corporate shall consist of such present members together with the members whose positions are hereby created; but no successors shall be appointed to such persons now serving. The director of education shall have power to speak, but not to vote in such board of trustees. In the year 1922 the governor shall appoint seven members of such body politic and corporate, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years and one for a term of seven years, all commencing on the fourteenth day of May of such year. Thereafter one trustee shall be appointed each year for a term of seven years from the fourteenth day of May of such year, and serve until his successor is appointed and qualified. A vacancy in the office of trustee shall be filled by like appointment for the unexpired term. Such trustees shall receive no compensation for their services, but shall be paid their actual and necessary expenses while engaged in the discharge of their official duties. No moneys appropriated for the use or support of the Ohio University shall be withdrawn from the state treasury for such use until "The President and Trustees of the Ohio University," as constituted when this section takes effect, shall consent to the provisions hereof and file duplicate certificates of such consent in the offices of the secretary of state and the auditor of state.

HISTORY.—109 v. 131.

Providing for  
sale of uni-  
versity lands.

SECTION 7932. The owners of lands or town lots held under leases from the president and trustees of the Ohio university, or held under sale-leases or assignments by or under the original lessees, may pay to the treasurer of the university, such sum of money, as, placed at interest at six per cent. will yield the amount of rent reserved in the original lease, or in case of a division of the original tract or parcel leased, will equal the proper aliquot part thereof, or the part agreed upon by the several owners. But a person so surrendering and releasing to such corporation must pay the necessary expenses incident to such change of tenure, and procure the services of an agent to perform the necessary labor thereof. Upon payment of such sum and of all rents due upon the land, on demand of such owner, the treasurer shall give him a certificate of such payment.

HISTORY.—R. S. § 4105-1; 80 v. 193, § 1.

The board of trustees of the Ohio university has power to lay out into lots the portion of land marked as "commons" on the town plat of the town of Athens, and dispose thereof for the benefit of the university: *Crippen v. Ohio University*, 12 O. 96.

Lands sold under the act of 1826 which were held under the act of 1804 were said to be subject to state taxes, in *Armstrong v. Athens County*, 41 U. S. (16 Pet.) 281, 2 O. F. D. 154 [affirming *Armstrong v. Athens County*, 10 O. 235].

A lease of land of the Ohio university for ninety-nine years, renewable forever is, in the absence of specific statutory provisions

with reference to its descent, to be regarded as personal property, and, accordingly, upon the death of the owner, it passes to the executor: *Murdock v. Ratcliff*, 7 O. 119.

A lease of land from the Ohio university amounts to a contract between the lessee and the state; and a subsequent act of the legislature imposing a tax upon such land, contrary to the provisions of such lease, is invalid, as impairing the obligations of such contract: *Matheny v. Golden*, 5 O. S. 361.

Land sold under the act of 1826, which was held under the act of 1804, was said to be subject to state taxation, in *Armstrong v. Athens County*, 41 U. S. (16 Pet.) 281, 2 O. F. D. 154 [affirming *Armstrong v. Athens County*, 10 O. 235].

The position of trustees of the Ohio University is not vacant unless such trustee dies, resigns, or there is a judicial decree declaring that his position is vacant. The act of the legislature in appointing a successor is not an adjudication of the existence of such vacancy: *State, ex rel., v. Bryce*, 7 O. 82.

SECTION 7933. Upon such payment, such owner shall be entitled to receive a deed of conveyance for such land by him owned, to be signed by the president of such corporation, countersigned by its secretary, and sealed with the corporate seal of the university, conveying the premises in fee simple to him, or such owner at his option, may demand and receive a certificate as aforesaid. The governor of Ohio, upon presentation thereof shall execute and deliver to such owner, a deed conveying the premises in fee simple to him.

Owner to receive deed; form of.

HISTORY.—R. S. § 4105-2; 80 v. 194, § 2.

SECTION 7934. Either of such deeds, so made, shall have the effect in law and in fact to vest in the grantee an absolute estate in fee simple in the premises, subject, however, to all liens, equities, or rights of third persons in, to or upon the premises.

Validity of such deed.

HISTORY.—R. S. § 4105-3; 80 v. 194, § 3.

SECTION 7935. Such secretary shall keep an accurate registry of all such payments, certificates and deeds, with an accurate description of the tract or lot of land so paid for or deeded. Thereafter, the land so deeded shall be subject to taxation in like manner as other freehold estates in such county. The original leases therefor, in so far as regards the land so deeded, shall cease to have force or effect.

Registry of deed, etc., to be kept.

HISTORY.—R. S. § 4105-4; 80 v. 194, § 4.

SECTION 7936. The treasurer of the Ohio university, on or before the first day of January, next, after such receipt of money, must deposit it in the state treasury upon the certificate of the state auditor. The sums so deposited shall be added to the irreducible trust funds held by the state for educational purposes, and interest thereon be paid semi-annually to the treasurer of such university, upon the requisition of the state auditor; and the president and trustees of the Ohio university shall have power to receive and hold in trust, for the use and benefit of the university, any

Deposit of money.

Power of trustees.

grant or devise of land, and any donation or bequest of money or personal property, to be applied to the general or special use of the university; all donations or bequests of money, together with other donations and bequests converted into money, shall be paid to the state treasurer, unless otherwise directed in the donation or bequest, and the sums so deposited shall be added to the irreducible trust funds held by the state for educational purposes, and interest thereon shall be paid semi-annually to the treasurer of said university upon the requisition of the state auditor.

HISTORY.—R. S. § 4105-5; 80 v. 194, § 5; 101 v. 208.

See Opinions of Attorney General (1914), p. 61, cited under Sec. 24.

Levy and collection of state tax upon lands donated to Ohio university.

SECTION 7937. A state tax or a tax equal to the state tax upon like property, shall be levied and collected upon all lands donated to the Ohio university, situated at Athens, Ohio, and held by lease from it or by deed from the governor or the university, including such parts of such lands as are or may be owned, occupied or used by railroad companies as road-beds, road-ways, station-houses, or for other purposes. Such taxes, when collected, shall be paid by the treasurer of Athens county, upon the warrant of the auditor of the county, to the treasurer of the Ohio university, for its use.

HISTORY.—R. S. § 4105-6; 82 v. 115, § 1.

Where the state, by an act incorporating the Ohio university, vested in that institution two townships of land for the support of the university and instruction of youth, and in the same act authorized the university to lease said lands for ninety-nine years, renewable forever, and provide that lands thus to be leased should forever thereafter be exempt from all state taxes, it was held that the acceptance of such leases at a fixed rent or rate of purchase by the lessees constitutes a binding contract between the state and the lessees. A subsequent act of the legislature, levying a state tax on such lands, is a "law impairing the obligation of contracts" within the purview of the tenth section of the first article of the constitution of the United States, and is, therefore, pro tanto, null and void: *Matheny v. Golden*, 5 O. S. 361.

Where one of these lessees of such lands sues as well for himself as for many other lessees of the same lands, holding on like terms with himself, equity will interpose to prevent multiplicity of suits and afford a remedy by injunction: *Matheny v. Golden*, 5 O. S. 361.

Tax in lieu of rents; tax collected from railroad companies.

SECTION 7938. The tax so collected upon lands so held by lease, shall be in lieu of so much of the rents due to the university. The tax so collected from railroad companies, and paid to the university, shall not include the tax upon rolling stock.

HISTORY.—R. S. § 4105-7; 82 v. 115, § 2.

By the fair construction of the resolutions, no discretion is given to the treasurer of the university to determine the amount of rent to be collected; but he is required to collect such an amount of additional rent as equals the taxes imposed on property of like description by the state: *Cable v. Ohio University*, 36 O. S. 113.



## MIAMI UNIVERSITY

SECTION 7939. The government of Miami university shall be vested in twenty-seven trustees, to be appointed by the governor by and with the advice and consent of the senate. Nine trustees shall be appointed every third year, for a term of nine years, beginning on the first day of March in the year of their appointment. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner. In addition to the trustees herein provided for, the director of education shall be a member of the board of trustees of Miami university, with power to speak but not to vote therein.

Appointment  
of trustees.

HISTORY.—66 v. 73, § 1; 109 v. 131.

SECTION 7940. In its annual report the board of trustees shall make a full and accurate report of all receipts and disbursements of the preceding year, the number of students in attendance, studies taught, and such other matters connected with the institution as the board deems important. Such report may be transmitted by the governor to the general assembly.

Annual re-  
port; contents.

HISTORY.—66 v. 73, § 2; 106 v. 508 (513).

SECTION 7941. The standing committee on colleges and universities of each legislature, shall examine into the condition of Miami university, and report to the legislature such matters as it deems important to the interests of the university.

Duty of stand-  
ing committee  
on colleges  
and uni-  
versities.

HISTORY.—66 v. 73, § 3.

SECTION 7941-I. The treasurer of Miami university on or before the first day of January next after the receipt of any donations or bequests of money or other property to be converted into money must deposit it in the state treasury upon the certificate of the state auditor. The sum so deposited shall be added to the irreducible trust fund held by the state for educational purposes, and interest thereon be paid semi-annually to the treasurer of such university, upon the requisition of the state auditor; and the president and trustees of Miami university shall have power to receive and hold in trust, for the use and benefit of the university, any grant or devise of land, and any donation or bequest of money or personal property, to be applied to the general or special use of the university; all donations or bequests of money, together with other donations and bequests converted into money, shall be paid to the state treasurer, unless otherwise directed in the donation or bequest, and the sum so deposited shall be added to the irreducible trust funds held by the state for educational purposes, and interest thereon shall be paid semi-annually to the treasurer of said university upon the requisition of the state auditor.

Deposit of  
donations and  
bequests,  
when con-  
verted.

HISTORY.—103 v. 564.

## OHIO STATE UNIVERSITY

Appointment  
of trustees;  
term, com-  
pensation, etc.

SECTION 7942. The government of the Ohio state university shall be vested in a board of seven trustees, who shall be appointed by the governor, with the advice and consent of the senate. One trustee shall be appointed each year for a term of seven years from the fourteenth day of May of such year, and serve until his successor is appointed and qualified. A vacancy in the office of trustee shall be filled by an appointment to be made in the same manner as an original appointment, but only for the unexpired term. The trustees shall not receive compensation for their services, but shall be paid their reasonable necessary expenses while engaged in the discharge of their official duties.

HISTORY.—R. S. §§ 4105-37, 4105-38; 75 v. 126, §§ 2, 3.  
For means to establish agriculture and mechanical college, see appendix, § 13881.

The Ohio state university is a branch of the state of Ohio, and not a corporation; and, accordingly, the statute creating such university is not a special act conferring corporate powers, and is not in violation of Art. XIII, § 1, of the Ohio constitution: *Neil v. Board of Trustees*, 31 O. S. 15.

A subscription to the Ohio agricultural and mechanical college in consideration that such college shall be located at a certain place, together with a guaranty of a third person of the performance of such subscription, was delivered to the trustees of such college and was accepted by them, and the college was located in accordance with the provisions of such subscription. Such subscription and guaranty are valid and enforceable instruments, and the board of trustees of such college may bring action thereon: *Neil v. Board of Trustees*, 31 O. S. 15.

That the board of trustees is not a corporation, see, also, *Thomas v. University Trustees*, 195 U. S. 207, 14 O. F. D. 433.

See Opinions of Attorney General as follows:

(1916), p. 318, cited under Sec. 7950-1.

(1917), p. 275, cited under Sec. 7974.

Style and  
power of  
trustees.

SECTION 7943. The trustees and their successors in office shall be styled the "board of trustees of the Ohio state university," with the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering it at pleasure.

HISTORY.—R. S. § 4105-10; 67 v. 21, § 4; § 8419, App. 1880.

The board of trustees of the Ohio state university is not a corporation: *Neil v. Board of Trustees*, 31 O. S. 15; see, to the same effect, *Thomas v. University Trustees*, 195 U. S. 207, 14 O. F. D. 433.

Officers of  
the board.

SECTION 7944. The board of trustees annually shall elect one of their number chairman, and in the absence of the chairman elect one of their number temporary chairman. It also may appoint a secretary, treasurer, and librarian, and such other officers as the interests of the college require, who may be members of the board. Such appointees shall hold their offices for such term as the board may fix, subject to removal by it, and receive such compensation as the board prescribes.

HISTORY.—R. S. § 4105-14; 67 v. 21, § 9.

SECTION 7945. Before entering upon the duties of his office the treasurer shall give bond to the state in such sum as the board of trustees determines, but not a less sum than the probable amount that will be under his control in any one year, conditioned for the faithful discharge of his duties and the payment of all moneys coming into his hands, the bond to be approved by the attorney general of the state. Such bond shall be deposited with the secretary of state and kept in his office.

Bond of treasurer, where filed.

HISTORY.—R. S. § 4105-14; 67 v. 21, § 9; 103 v. 528 (534).

SECTION 7946. Meetings of the board of trustees shall be called in such manner, and at such times as the board prescribes. The board shall meet at least three times annually, and at such other times as may be necessary for the best interest of the university. A majority of the board present at any meeting shall constitute a quorum to do business; but a majority of all the board shall be necessary to elect or remove a president or professor.

Meetings of board.

HISTORY.—R. S. § 4105-41; 75 v. 126, § 6.

SECTION 7947. In its annual report the board of trustees shall state the condition of the university; the amount of receipts and disbursements, and for what the disbursements were made; the number of professors, officers, teachers, and other employes and the position and compensation of each, the number of students in the several departments and classes, and the course of instruction pursued in each; also an estimate of the expenses for the ensuing year; a statement showing the progress of the university, recording any improvements and experiments made, with their costs, and the results, and such other matters as are useful. The president thereof shall transmit by mail one copy respectively to the secretary of the interior and the secretary of agriculture of the United States, and to each of the colleges which are or may be endowed under the provisions of the act of congress of July 2, 1862.

Annual report of trustees; contents.

HISTORY.—R. S. § 4105-42; 75 v. 126; 90 v. 292, § 7; 106 v. 508 (513). For the present statute with reference to the reports of state officers, see G. C. § 2264-1 (106 v. 508).

SECTION 7948. The board of trustees may adopt by-laws, rules and regulations for the government of the university.

Board may make rules and regulations.

HISTORY.—R. S. § 4105-11; 67 v. 21, § 5.

SECTION 7949. The board of trustees shall elect, and fix the compensation of and remove, the president and such number of professors, teachers and other employes as may be deemed necessary; but no trustee, or his relation by blood or marriage, shall be eligible to a professorship or position in the university, the compensation for which is payable out of the state treasury or a university fund. The board shall fix and regulate the course of instruction

Election of president, professors, etc., and course of instruction.



and prescribe the extent and character of experiments to be made at the university.

HISTORY.—R. S. §§ 4105-11, 4105-37; 67 v. 21, § 5; 75 v. 126, § 2; 90 v. 602, § 9.

Property, ex-  
penses, etc.

SECTION 7950. The board of trustees shall have general supervision of all lands, buildings, and other property belonging to the university, and the control of all expenses therefor, but shall not contract a debt not previously authorized by the general assembly of the state.

HISTORY.—R. S. § 4105-13; 67 v. 21, § 8.

The trustees of the Ohio State University are not authorized to dedicate any portion of the university property for street purposes without express legislative authorization. Op. Atty. Gen. (1916), p. 1730.

See Opinions of Attorney General (1916), p. 318, cited under Sec. 7950-1.

High school  
on campus of  
Ohio state  
university.

SECTION 7950-1. The construction of a high school building on the campus of the Ohio state university is hereby authorized upon such terms as may be agreed upon by the trustees of the Ohio state university and the board of education of the city school district of the city of Columbus, Ohio, and such high school shall be used as an observation and practice school by the college of education of the Ohio state university upon the terms and conditions as agreed upon by the said board of trustees and the said board of education.

At no time shall the state of Ohio be called upon to assist in defraying the expenses of conducting or repairing such school.

HISTORY.—102 v. 297, § 1.

The trustees of the Ohio State University are not authorized, without further legislation, to permit the city of Columbus to erect a city hospital on the campus of such university. Op. Atty. Gen. (1916), p. 318.

Permission to  
the alumni of  
O. S. U. to  
present dormi-  
tory buildings  
and authorize  
trustees to  
enter into  
contract for  
such purpose.

SECTION 7950-2. The board of trustees of the Ohio state university is hereby authorized to enter into a contract with any incorporated association of alumni of said university whereby such association shall be permitted to erect upon the campus of said university, and upon a site to be designated by said board of trustees, a suitable building or buildings to be used as dormitories for students and members of the faculty of the university. Such contract may provide that the legal title to such building or buildings shall remain in such association, and that the same shall be subject to mortgage or other encumbrance by such association; that the necessary repairs on such building or buildings shall be made by the trustees of the Ohio state university and paid for out of any appropriation made by the general assembly for such purposes; and that the control and management of such building or buildings shall be vested in such association, subject to such disciplinary regulations as may be provided by said board of trustees. Such contract shall, however, provide that upon

the payment of the indebtedness of such association, incurred in the erection and equipment of such building or buildings and the discharge of such building or buildings from liens or encumbrances, the legal title to such building or buildings, and any and all appurtenances thereof, and furniture and equipment therein, shall pass to and be vested in the state. The purpose of this section is to authorize the said trustees to permit the alumni of the Ohio state university to present to the state a building or buildings, and furniture and equipment for the aforesaid purposes, and to adopt such plans and financial arrangements as may be, within the limitations hereinbefore set forth, appropriate therefor.

HISTORY.—103 v. 660, § 1.

SECTION 7951. The board of trustees may receive, and hold in trust, for the use and benefit of the university, any grant or devise of land, and donation or bequest of money or other personal property, to be applied to the general or special use of the university. All donations or bequests of money shall be paid to the state treasurer, and invested in like manner as the endowment fund of the university, unless otherwise directed in the donation or bequest.

Board may receive devises of land, etc.

HISTORY.—R. S. § 4105-15; 67 v. 22, § 11.

See Opinions of Attorney General as follows:

(1916), p. 318, cited under Sec. 7950-1.

(1916), p. 1730, cited under Sec. 7950.

SECTION 7952. The title for all lands for the use of the university shall be made in fee simple to the state of Ohio, with covenants of seizin and warranty, and no title shall be taken to the state for the purposes aforesaid until the attorney-general is satisfied that it is free from all defects and incumbrances.

Title of lands to be vested in the state, etc.

HISTORY.—R. S. § 4105-16; 67 v. 22, § 13.

See Opinions of Attorney General as follows:

(1916), p. 318, cited under Sec. 7950-1.

(1916), p. 1730, cited under Sec. 7950.

SECTION 7953. The attorney-general of the state shall be the legal adviser of such board of trustees. He shall institute and prosecute all suits in their behalf and receive like compensation therefor as he is entitled to by law for suits brought in behalf of the asylums of the state.

Attorney-general to be legal adviser of the board.

HISTORY.—R. S. § 4105-17; 67 v. 22, § 15.

SECTION 7954. The university shall be open to all persons over fourteen years of age, subject to such rules, regulations and limitations, as to numbers from the several counties of the state, as is prescribed by the board of trustees. But each county shall be entitled to its just proportion, according to its population. The board may provide for

Who admitted as pupils; lectures.

courses of lectures, either at the seat of the university or elsewhere in the state, which shall be free to all.

HISTORY.—R. S. § 4105-12; 67 v. 20, § 7.

See Opinions of Attorney General (1915), p. 1135, cited under Sec. 7973.

Establishment of colleges of medicine and dentistry in Ohio state university.

SECTION 7954-1. That for the purpose of advancing and promoting the science and art of medicine and the science and art of dentistry, the board of trustees of the Ohio state university be, and they are hereby authorized and empowered to create, establish, provide for and maintain in said university a college of medicine and a college of dentistry; and to negotiate for and receive conveyances and transfers of property, both real and personal, to be used for the purposes aforesaid; and to accept the students now in attendance at any college of medicine, dentistry or pharmacy whose property is so acquired, with the rank and standing as certified by the proper officers of such college; and to take such steps as may be necessary to protect the professional rights of the alumni of such college or colleges and their predecessors; and to receive from such college or colleges such papers and records as may be necessary for that purpose.

HISTORY.—103 v. 344, § 1.

Branches prescribed.

SECTION 7955. The board of trustees, in connection with the faculty of the university shall provide for the teaching of such branches of learning as are related to agriculture and the mechanic arts, mines and mine engineering, and military tactics, and such other scientific and classic studies as the resources of the fund will permit.

HISTORY.—R. S. § 4105-45; 77 v. 227, § 10; 75 v. 126.

Authority to establish university extension division, purposes.

SECTION 7955-1. The board of trustees of the Ohio state university is hereby authorized and directed to establish and organize a university extension division for the purpose of carrying on educational extension and correspondence instruction throughout the state. The board of trustees is authorized to carry on such extension work in connection with any department of the Ohio state university, for the purpose of the development throughout the state of centers for the discussion, consideration and investigation relative to the mining, manufacturing, engineering, social, industrial, economic, medical and civic interests of the state and all other public interests which may be in any way prompted or subserved in the spreading of information throughout the state by any department of the Ohio state university, that now exists or may be hereafter established, pursuant to the grant by virtue of which said university was created and established.

HISTORY.—103 v. 662, § 1.

Further purposes.

SECTION 7955-2. The board of trustees of the university, through the university extension division, shall encourage communities to organize for the purpose of social,



educational, scientific and recreational advantage, and shall co-operate with them and in every way contribute to the efficiency of the efforts of such communities for these purposes. To this end, as far as practicable, the extension division shall be placed at the service of educational, industrial or civic institutions, organizations and associations, and invite their active co-operation in matters relating to the civic, scientific, economic and social welfare of the citizens of the state.

HISTORY.—103 v. 662, § 2.

SECTION 7955-3. The board of trustees of the Ohio state university is authorized to carry on, under the supervision of such university extension division, such discussions, investigations, experiments and demonstrations as it may deem advisable for the improvement of the engineering, mining, manufacturing, social, medical, scientific, industrial, economic and civic interests, and such other public interests of the state as may in any way be promoted or subserved by any department of the Ohio state university which now exists or which may hereafter be established, and for such purposes it may provide traveling instructors and conduct correspondence instruction and teaching. It is further provided that any common carrier is authorized and empowered to carry persons employed in such demonstrations, experiments and discussions, and the equipment therefor, and the traveling lecturers and instructors provided for in this act [G. C. §§ 7955-1 to 7955-3], free, or at reduced rates.

HISTORY.—103 v. 662 (663), § 3.

SECTION 7956. The board of trustees shall collect, or cause to be collected, specimens of the various cereals, fruits, and other vegetable products, and have experiments made in their reproduction upon the lands of the university, and make report thereof from year to year, together with such other facts as tend to advance the interests of agriculture.

HISTORY.—R. S. § 4105-39; 75 v. 126, § 4.

SECTION 7957. The board of trustees shall secure and keep in the university a collection of specimens in mineralogy, geology, zoology, botany, and other specimens pertaining to natural history and the sciences. The president of the university shall collect and deposit therein in the manner directed by the trustees, a full and complete set of specimens as collected by him and his assistants, together with a brief description of the character thereof, and where obtained. Such specimens shall be properly classified and kept for the benefit of the university.

HISTORY.—R. S. § 4105-40; 75 v. 126, § 5.

SECTION 7958. The board of trustees of the university shall establish therein a department of ceramics, equipped and designed for the technical education of clay, cement and glassworkers, in all branches of the art which exist

Supervise and carry on discussions, investigations, etc., of questions of public interest.

Duties of board as to cereals, etc.

Collections of specimens of geology, etc.

Department of ceramics.

in this state, or which profitably can be introduced and maintained herein from the mineral resources thereof, including the manufacture of earthenwares, stonewares, yellowwares, whitewares, china, porcelain and ornamental pottery, the manufacture of sewer-pipe, fire-proofing, terracotta, sanitary claywares, electric conduits and specialties, fire-bricks and all refractory materials, glazed and enameled bricks, pressed bricks, vitrified paving material as well as the most economic methods in the production of the coarser forms of bricks used for building purposes; and the manufacture of tiles used for paving, flooring, decorative wall-paneling, roofing and draining purposes; also the manufacture of cement, concrete, artificial stone and all kinds of glass products and all other clay industries represented in this state.

HISTORY.—R. S. § 4105-30; 91 v. 164, § 1.

Special instruction therein.

SECTION 7959. Such department shall offer special instruction to clay-workers on the origin, composition, properties and testing of clays, the selection of materials for different purposes, the mechanical and chemical preparation of clays, the laws of burning clays, the theory and practice of the formation of clay bodies, slips and glazes, and the laws which control the formation and fusion of silicates.

HISTORY.—R. S. § 4105-31; 91 v. 164, § 2.

Laboratory.

SECTION 7960. Such department shall be provided with an efficient laboratory designed especially for the practical instruction of clay-workers in the list of subjects enumerated in section seventy-nine hundred and fifty-eight, and also be equipped to investigate into the various troubles and defects incident to every form of clay working, which can not be understood or avoided except by use of such scientific investigation. Such laboratory shall be equipped with apparatus for chemical analysis, with furnaces and kilns for pyrometric and practical trials, with such machinery for the grinding, washing and preparation of clays for manufacture, as is consistent with the character of the department.

HISTORY.—R. S. § 4105-32; 91 v. 164, § 3.

Expert.

SECTION 7961. To conduct this department of ceramics, the board of trustees shall employ a competent expert, who shall unite with the necessary education and scientific acquirements, a thorough practical knowledge of clay-working, and not less than two years' actual experience in some branch of the art. He shall teach the theoretical part of the subject, conduct the laboratory for the instruction of students, prosecute such scientific investigations into the technology of the various clay industries as may be practicable, and from time to time publish the results of his investigations in such form that they will be accessible to the clay-workers of the state for the advancement of the art.

HISTORY.—R. S. § 4105-33; 91 v. 164, § 4.

SECTION 7961-1. That the board of trustees of the Ohio state university be, and are hereby authorized and required to establish an organization to be known as the engineering experiment station of the Ohio state university, to be affiliated and operated in connection with the college of engineering.

Establishment of engineering experiment station at O. S. U.

HISTORY.—103 v. 647, § 1.

SECTION 7961-2. The purpose of the station shall be to make technical investigations and to supply engineering data which will tend to increase the economy, efficiency and safety of the manufacturing, mineral, transportation and other engineering and industrial enterprises of the state, and to promote the conservation and utilization of its resources.

Purposes of station.

HISTORY.—103 v. 647 (648), § 2.

SECTION 7961-3. The station shall be under the control of the board of trustees of the university, through the regular administrative and fiscal officers. The board shall appoint a director on recommendation of the president of the university. There shall be an advisory council of seven members, appointed by the board of trustees, of which council the director shall be ex-officio a member, and chairman, said director and the other six members to be chosen from the faculty of the college of engineering. The terms of these members shall be for three years, except that when first organized, two members shall be appointed for one year, two members for two years, and two for three year terms respectively. It shall be the duty of the director and advisory council to select suitable subjects for investigation, apportion the available funds, and provide for the dissemination of the results to the people of the state.

Board of trustees shall have control; administrative and fiscal officers, terms.

HISTORY.—103 v. 647 (648), § 3.

SECTION 7961-4. The various laboratories of the college of engineering and the equipments shall be available for the use of the engineering experiment station, provided always that their use for instruction and research in the regular work of the college shall take precedence over their use by the station. The director of the station shall have authority to procure for temporary or permanent use such additional equipment as may be needed, and install the same in the laboratories of the college or elsewhere.

Laboratories and equipment of college available for use.

HISTORY.—103 v. 647 (648), § 4.

SECTION 7961-5. The engineering experiment station shall not be conducted for the private or personal gain of any one connected with it, or for the financial advantage of the Ohio state university as an organization, or for the sole benefit of any individual, firm or corporation.

Station shall not be conducted for gain or advertisement of O. S. U.

Any commission, board, bureau or department of the state, or any institution owned by the state, may seek assistance of the engineering experiment station, and such requests shall have precedence over all other outside re-

Assistance to departments, boards, etc., of the state shall be preferred.



quests. The advisory council of the engineering experiment station is, however, empowered to decline such requests or to require that the expense of such investigations shall be borne in part or in whole by the commission, board, bureau, or department of state, or institution owned by the state, making such requests.

Individual,  
firm, etc.,  
may have as-  
sistance.

Any individual, firm, or corporation may seek the assistance of the engineering experiment station; the advisory council of said station is, however, empowered to decline to render such assistance or to require that any expense incidental to such assistance shall be borne in part or in whole by the individual, firm or corporation seeking such assistance, and the advisory council of the engineering experiment station is further authorized at its option to publish the results of such investigations.

Nothing in this bill shall be construed as in any way limiting the powers of the advisory council of the engineering experiment station to carry on lines of investigation upon its own initiative.

HISTORY.—103 v. 647 (648), § 5.

Establishment  
of a school  
of mines.

SECTION 7962. The board of trustees of the university are required to establish therein, a school of mines and mine engineering, in which shall be provided the means for scientifically and experimentally studying the survey, opening, ventilation, care and working of mines. Such school shall be provided with a collection of drawings, illustrating the manner of opening, working, and ventilating mines; with the necessary instruments for surveying, measuring air, examining and testing the noxious and poisonous gases of mines, and with models of the most improved machinery for ventilating and operating all the various kinds of mines with safety to the lives and health of those engaged therein. Such school also shall be provided with complete mining laboratories for the analysis of coals, ores, fire-clays and other minerals, and with all the necessary apparatus for testing the various coals, ores, fire-clays, oils, gases, and other minerals.

HISTORY.—R. S. § 4105-26; 85 v. 155, § 1; 74 v. 216.

Employment  
and duties of  
instructors.

SECTION 7963. The board of trustees shall employ competent persons to give instruction in the most improved and successful methods of opening, operating, surveying and inspecting mines, including the methods and machinery employed for extracting coal, ore, fire-clay, oil, gas and other minerals from the pit's mouth and for facilitating the ascent and descent of workmen, the draining and freeing of mines from water, the causes of the vitiation of air, the quantities of fresh air required under the various circumstances, natural ventilation, mechanical ventilation by flues and fans, and other ventilating machinery, the use of air engines, air compressors and coal cutting machinery; also instruction in the various uses of coals, ores, fire-clays, oils, gases and other minerals, and the methods of testing, anal-

yzing and assaying such minerals; and the methods employed in metallurgical and other processes in the reduction of ores and in determining the qualities of metals, particularly iron and steel, as shown by practical and laboratory tests. There also shall be kept in a cabinet properly arranged for ready reference and examination, suitably connected with such school of mines, samples of the specimens from the various mines in the state, which may be sent for analysis, together with the names of the mines and their localities in the counties from which they were sent, with the analysis and a statement of their properties attached. Such person shall also furnish an analysis of all minerals found in the state and sent to him for that purpose by residents thereof.

HISTORY.—R. S. § 4105-27; 85 v. 155, § 2; 74 v. 216.

SECTION 7964. The professor occupying the chair in the chemical and mechanical department of the university, upon application, shall make and give a written analysis of artificial fertilizers furnished to him for that purpose.

Written analysis of fertilizers.

HISTORY.—R. S. § 4105-35; 75 v. 91, § 2.

For provisions relating to forestry, see G. C. §§ 1177-10 et seq.

SECTION 7971. All funds derived from the sale of land scrip issued to this state by the United States, in pursuance of any act of congress, together with the interest accumulated thereon, shall constitute a part of the irreducible debt of the state, the interest upon which, as provided by law shall be paid to the university by the auditor of state, upon the requisition of the commissioners of the sinking fund, issued on the certificate of the secretary of the board of trustees, that it has been appropriated by such trustees to the endowment, support, and maintenance of the university, as provided in such act of congress.

Funds from sale of land scrip.

HISTORY.—R. S. § 4105-43; 75 v. 126, § 8.

SECTION 7972. On the first days of January and July in each year, the auditor of state shall invest the interest arising from the "agricultural college scrip fund" in the same manner in which the principal thereof is invested.

Investment of interest of "scrip fund."

HISTORY.—R. S. § 4105-47; 67 v. 16, § 2.

For acts authorizing certificates of indebtedness to be issued in anticipation of the levies under G. C. § 7575; 88 v. 591; 89 v. 321; 92 v. 191, 285; 94 v. 94; 95 v. 545.

Refunding certificates issued under acts of 1891, 1892; 91 v. 62.

SECTION 7973. The College of Agriculture and Domestic Science of the university shall arrange for the extension of its teachings throughout the state, and hold schools in which instructions shall be given in soil fertility, stock raising, crop production, dairying, horticulture, domestic science and kindred subjects. No such school shall exceed one week in length, and not more than one be held in any county during a year.

County schools.

HISTORY.—100 v. 11, § 1.

An "agricultural extension school" within the meaning of section 7973 G. C., applicable to the Ohio State University, means

a school conducted as an activity of the college of agriculture and domestic science of said university in the manner therein specified.

When one such school, fulfilling all the requirements of said section, has been held in a given county in a given year, no other such school may be so held therein in that year; but the board of trustees of the Ohio State University has authority to provide free public lectures, and the giving of such free public lectures in any county in any year would not preclude the holding of an agricultural school in such county in that year.

The ultimate distinctions between public lectures and agricultural extension work are academic rather than legal. Op. Atty. Gen. (1915), p. 1135.

See Opinions of Attorney General (1917), p. 275, cited under Sec. 7974.

Instructions  
to be given;  
contests.

SECTION 7974. In addition to the holding of such schools, such college shall give instruction and demonstrations in various lines of agriculture, at agricultural fairs, institutes, granges, clubs, or in connection with any other organizations, that, in its judgment, may be useful in extending agricultural knowledge. Such college may conduct agricultural contests in co-operation with the federal government or otherwise and may receive gifts from organizations or individuals in furtherance of such contests. The work of extension may also include instruction by mail in agriculture and mechanic arts, and the publication of bulletins designed to carry the benefits of its teaching to communities remote from the college. Any common carrier is authorized and empowered to carry the persons employed by and the equipment and exhibits used in such instruction and demonstrations, free or at reduced rates.

HISTORY.—100 v. 11, § 2; 101 v. 356; 107 v. 559.

The provision of section 7974 G. C. permitting common carriers to carry persons employed and exhibits and equipment used, in agricultural extension work, free, is not repealed by implication by section 516 G. C.

A railroad company may carry such persons, exhibits or equipment free or at reduced rates. Op. Atty. Gen. (1917), p. 275.

Establishment  
of agricultural  
school at New  
Lyme; con-  
trol and  
supervision.

SECTION 7974-1. There is hereby created and established a state agricultural school to be located at New Lyme, in the county of Ashtabula, to be connected with the Ohio state university, and under the supervision and control of the board of trustees of said university.

HISTORY.—106 v. 320, § 1.

Trustees may  
receive and  
control certain  
property.

SECTION 7974-2. Said board of trustees may receive and hold in trust for the special use and benefit of said state agricultural school, any grant, gift or bequest of land or personal property, and also the lands, moneys, notes, mortgages and other personal property now held in trust for educational purposes by the board of trustees of New Lyme institute located at New Lyme in the county of Ashtabula.

HISTORY.—106 v. 320, § 2.

Branches of  
learning to be  
taught.

SECTION 7974-3. The board of trustees of the Ohio state university, in connection with the faculty thereof, shall provide for teaching in said school during a period of at



least eight months in each year, such branches of learning as are related to agriculture, the mechanic arts, home economics and such other scientific and classic studies as will prepare students for efficient citizenship, for vocational and industrial pursuits, and for admission to colleges and universities.

HISTORY.—106 v. 320, § 3.

SECTION 14976. The educational institution heretofore designated as the Ohio agricultural and mechanical college shall be known and designated hereafter as "The Ohio State University."

To be known as "The Ohio State University."

HISTORY.—75 v. 128.

SECTION 14977. A college, to be styled The Ohio Agricultural and Mechanical College, is hereby established in this state, in accordance with the provisions of an act of congress of the United States, passed July 2d, 1862, entitled "an act donating public lands to the several states and territories which may provide colleges for the benefit of agricultural and mechanic arts," and said college to be located and controlled as hereinafter provided. The leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agricultural and mechanic arts.

Establishment and style of college.

HISTORY.—67 v. 20.

SECTION 14978. It shall be the duty of the board of trustees to permanently locate said agricultural and mechanical college upon lands, not less than one hundred acres which in their judgment is best suited to the wants and purposes of said institution, the same being reasonably central in the state, and accessible by railroad from different parts thereof, having regard to healthiness of location, and also regarding the best interests of the college in the receipt of moneys, lands, or other property donated to said college by any county, town, or individual, in consideration of the location of said college at a given place; provided, it shall require a three-fifths vote of the trustees to make said location; and, provided further, that said location shall be made on or before the fifteenth day of October, 1870; provided, further, that any person acting as trustee, who shall accept or receive, directly or indirectly, any sum or amount from any person or persons, to use their influence in favor of the location of said college at any particular point or place, shall be held to be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be fined in any sum not less than one thousand nor more than ten thousand dollars; provided, further, that in the location of said college the said trustees shall not in any event incur any debt or obligation exceeding forty thousand dollars; and if, in their opinion, the interests of the college can not be best promoted without a larger

Location of the college; sundry provisions.

expenditure for the location than that sum, then they may delay the permanent location of the same until the **third** Monday of January, 1871, and report their proceedings and conclusions to the general assembly: provided, further, that said college shall not be located until there are secured thereto for such location, donations in money, or unincumbered lands, at their cash valuation, whereon the college is to be located, or in both money and such lands, a sum equal to at least one hundred thousand dollars.

HISTORY.—67 v. 20.

Acceptance of  
ceded lands.

SECTION 14979. The unsurveyed and unsold lands ceded to the state of Ohio by a certain act of congress of the United States, approved February 18, 1871, situate and being in the Virginia Military District between the great Scioto and the Little Miami rivers in said state, be and the same are hereby accepted by the state of Ohio, subject to the provisions of said act.

HISTORY.—70 v. 107.

For school and ministerial lands, see G. C. § 3181, et seq.

Compensation  
for damages  
to lands may  
be demanded,  
etc.

SECTION 14980. That the trustees of the Ohio Agricultural and Mechanical College are hereby authorized to demand from all persons who have destroyed or converted any timber growing upon the lands ceded to the state of Ohio, as stated in the act to which this is supplementary, since the date of said act of congress ceding said lands to the state of Ohio, full compensation for the timber so destroyed or converted, and for all damages, and if payment shall be refused, to institute proper proceedings in the name of said Ohio Agricultural and Mechanical College, in any court of competent jurisdiction, to recover the same with damages and costs of suit; provided, that the provisions of this section shall not apply to timber taken from the one hundred and sixty acres by any person who shall obtain the title to the same under section three [G. C. § 14981] of this act.

HISTORY.—70 v. 107.

Title of lands  
invested in  
trustees of  
agricultural  
college, etc.

SECTION 14981. The title of said lands is hereby vested in the trustees of the Ohio Agricultural and Mechanical College, for the benefit of said college; and said trustees are hereby required to cause a complete survey of said lands to be immediately made, and a correct plat thereof to be returned to said trustees, and to ascertain and set off, in reasonably compact form, by accurate boundaries to each occupant who was in actual possession of and living upon any of said land at the time of the passage of said act of congress, as provided therein, or their heirs and assigns, a tract not exceeding forty acres, and upon the payment, by the claimant, of the cost of surveying and making the deed, the said trustees shall make and deliver to said claimant a deed for said tract; and if any such occupant shall have been in such actual possession of more than forty acres, and is desirous of holding the same, he shall be entitled to have

in addition to said forty acres, any number of acres not exceeding, with said forty acres, the number of one hundred and sixty acres, to be in reasonably compact form, by paying for the said excess over forty acres, the sum of one dollar per acre; and if any claimant under the provisions of this act shall desire to purchase any tract of land adjoining said forty acres, not exceeding, including said forty acres, the amount of one hundred and sixty acres, of which said claimant shall have been in actual possession, but does not desire to purchase the same at one dollar per acre, said trustees, upon notice by said claimant, shall cause said tract or part of tract to be sold separate from other tracts of land at a valuation fixed upon by the appraisers named in this act, payable one-third at the date of the survey, and the residue in two equal installments, with interest at six per cent., payable annually, and upon full payment being made with the cost of survey and conveyance, said trustees shall make and deliver to such claimant, his or her heirs or assigns, a deed for said excess over said forty acres; provided, that any person claiming the benefit of the provisions of this section as occupant, shall comply in all respects with, and be subject to the provisions of the thirteenth section of the act of congress, approved September 4, 1841, entitled an act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights, and to the rules and regulations of the general land office of the United States relating to proof for the establishment of pre-emptor's claims; provided, however, that the affidavit required by said thirteenth section of said act of congress may be made before any justice of the peace or other officer authorized to administer oaths.

HISTORY.—70 v. 107.

SECTION 14982. All the unsurveyed and unsold lands in said military district, not occupied as aforesaid, shall be divided by said trustees into such tracts, not exceeding five hundred acres in any one boundary, as will be most advantageous, reference being had to the quality of said lands and the uses to which they will be applied; the boundaries to all such tracts and divisions shall be accurately surveyed, and the lines of each tract plainly marked, and substantial stone monuments firmly placed at the principal corners. The character of the soil, water-courses, elevation of hills, timber, ledges, or stratas of the Waverly building stone, iron ore, fire clay, and limestone, shall be fully noted by the surveyors on their plats and in their field-books. All the tracts so divided and surveyed shall be numbered in consecutive order, commencing with the tracts in Adams county, and so continuing until all said lands in said district shall be platted and numbered; which numbers shall be shown upon the plats, and the said plats shall correctly indicate all township lines. The said lands, when so divided, surveyed and numbered, shall be appraised in separate tracts at their true value in money, by three qualified free-

Division of  
unsold lands  
into tracts,  
etc.; tracts to  
be numbered  
and appraised.



hold residents in said state, to be summoned by said trustees, or any committee of theirs. Said appraisers, before entering upon their duties, shall take and subscribe an oath before competent authority honestly and impartially to appraise all such lands, and to perform all other duties in relation thereto; they shall each be paid two dollars a day for their services, and their expenses allowed them; they shall make due return of all their appraisements to said trustees, which, with all said plats and surveys, shall be delivered by them to the auditor of state, and the same shall be recorded in the office of said auditor in suitable books to be provided for such purpose; which, with all such original plats, surveys, and papers, shall form a part of the public records of the state in the land department of said office.

HISTORY.—70 v. 107.

To be sold at private or public auction sale; contracts of sale to be recorded, etc.

SECTION 14983. And the said trustees are hereby authorized and required to sell all of said lands at public or private sale, at a price not less than the appraised value thereof, on such terms for cash and credit as may be agreed upon between the purchaser and said trustees, or any authorized agent of theirs; provided, that the first payment shall, in every case, be not less than one-third of the appraised value of such tract; all deferred payments shall bear six per cent. interest, to be paid annually, and said trustees may, in their discretion, extend subsequent annual payments through a period not exceeding five years. All public sales of said lands shall be by auction, at the front door of the court house of the county in which these lands so offered lie, after having been advertised five consecutive weeks in a newspaper published and generally circulated in such county; such notices of sale shall contain a sufficient description of the premises to clearly identify the same, with a statement of the terms of payment and the amount of appraisement, and all such public sales shall be made at such times as said trustees shall deem expedient; and in case such land or any tract thereof shall not sell for the amount of the appraisement at such public sale, then upon the same being again offered as aforesaid at public sale, the same may be sold for any sum not less than three-fourths of the appraisement: provided, that no trustee of said college or appraiser of said land shall be the purchaser of any of said lands at any such sale or sales, either directly or indirectly. The said trustees shall cause all contracts for the sale of said lands to be printed or written in a book or books, stating the consideration and terms of all sales, which said contracts shall be signed in duplicate by the said trustees or any authorized agent of theirs, and by the purchaser or purchasers, one copy of which shall be preserved in said book, and the other shall be delivered to the purchaser at the time the same shall be signed; and every purchaser shall execute his promissory note or notes, with interest, payable as aforesaid, for all deferred pay-

ments, which notes shall be non-negotiable, and payable to said college at such place or places as may be directed by said trustees; and upon full payment being made by the purchaser, his heirs, or assigns, for any such land, every such person shall be entitled to receive a conveyance therefor in fee simple by deed of said trustees, executed by the president of the board, under the corporate seal of said college; and all lands disposed of under the provisions of this act, shall be returned by said trustees to the auditors of the counties in which they are situate, and by them be placed on the duplicate for taxation.

HISTORY.—70 v. 107.

SECTION 14984. The proceeds of the sales of such lands, or so much thereof as may be necessary, after the payment out of the same of all the necessary expenses of survey and sale remaining uncertified into the treasury of said state, may be used by said trustees in building and maintaining upon the lands of said university a suitable number of houses, adapted to use as family residences, for the use of members of the faculty of said university, for which use a fair and reasonable rent shall be paid to said university. Said buildings shall be erected under the provisions of title six of the revised statutes of Ohio; and the said trustees shall annually report to the governor a detailed statement of receipts and disbursements in the execution of the trust under the provisions of this act.

Trustees of  
Ohio state  
university  
may erect  
residences for  
faculty.

HISTORY.—1882, April 17. 79 v. 144; Rev. Stat. 1880; 70 v. 107.

SECTION 14985. The act entitled an act to sell lands ceded to the state of Ohio by the congress of the United States by an act of congress, approved February 18th, 1871, passed March 26, 1872, and the act supplementary thereto and amendatory thereof, passed April 29th, 1872, be and they are hereby repealed: provided, that the passage of this act shall in nowise affect the validity of the transactions of said board of trustees, or rights vested in any person, under the provisions of said acts; and this act shall take effect and be in force from and after its passage.

Acts repealed.

HISTORY.—70 v. 107.

SECTION 14986. The auditor of state be and is required to compute the interest which has accrued and will accrue on the agricultural college scrip fund since the same has been sold, to July first, one thousand eight hundred and seventy, compounding the same by semi-annual rests on the first day of January and the first day of July in each year; and on the fifteenth day of June eighteen hundred and seventy to transfer the sum so arising to the said college fund, and invest the same in the interest bearing bonds of the state, in the same manner as the principal of the said fund is now invested.

Computation  
and invest-  
ment of in-  
terest.

HISTORY.—67 v. 15.

Trustees of  
Ohio state  
university au-  
thorized to  
make deeds.

SECTION 14987. As soon as the board of trustees of the Ohio state university accepts the provisions hereinafter made, it is hereby authorized and required to execute and deliver upon demand, a deed of conveyance to the parties in possession under claim of title of any unpatented survey or part thereof, in said Virginia military district; provided, however, that all applicants for such deed must furnish said trustees with a certified copy of the deed under which they claim, and if required, a certified copy of the unpatented survey in which their lands are situate, as the necessary evidence to satisfy the board that the same has never been patented, but has been occupied and improved by the said parties in possession or those under whom they claim title, for more than twenty-one years. Provided, also, that each applicant shall pay the board of trustees the sum of two dollars, as the cost of preparing and executing such deed.

HISTORY.—86 v. 92.

#### WILBERFORCE UNIVERSITY

Normal and  
industrial de-  
partment.

SECTION 7975. A combined normal and industrial department shall be established and maintained at Wilberforce university, in Greene county, Ohio.

HISTORY.—R. S. § 4105-54; 84 v. 127, §1.

Exclusive authority, direction and control under the operation and conduct of the normal and industrial department of Wilberforce University is vested in the board of trustees of such department. Op. Atty. Gen. (1919), p. 1226.

Appropriations made by the general assembly of this state for its educational institutions may not be used by said institutions for any purpose other than that for which said appropriations are made.

Students from other states attending such institutions for educational purposes only and having no habitation within this state other than such institutions which they are attending, and whose parents or families reside in another state, are not entitled to exercise the elective franchise nor to receive free scholarships limited by law to residents of this state. Op. Atty. Gen. (1915), p. 1827.

Board of  
trustees.

SECTION 7976. The government of such department shall be vested in a board of nine trustees to be known as "the board of trustees of the combined normal and industrial department of Wilberforce university." Five members of such board shall be appointed by the governor, by and with the consent of the senate, and three members thereof shall be chosen by the board of trustees of the university. The president of the university shall be ex-officio a member of the board. The governor shall appoint one member of such board each year, who shall serve five years, and whose term shall begin upon the first day of July in such year. Such appointments shall be made during the session of the senate next preceding the beginning of such term.

HISTORY.—R. S. § 4105-55; 92 v. 275, § 2; 89 v. 368; 87 v. 215; 84 v. 127.



SECTION 7977. One member of the board shall be chosen by the board of trustees of the university at a regular meeting in each year, and shall hold office for the term of three years from the thirtieth day of June in such year.

Choosing of trustees by university board.

HISTORY.—R. S. § 4105-56; 89 v. 368, § 3; 84 v. 127.

SECTION 7978. In case a vacancy in that portion of the board appointed by the governor or chosen by the university occurs from death, resignation, or other cause, the appointment or selection to fill such vacancy shall be made in the one case by the governor, and in the other by the executive board of the university for the unexpired term.

Vacancies.

HISTORY.—R. S. § 4105-57; 84 v. 127, § 4.

SECTION 7979. Forthwith upon a choice by the university board of a trustee, the secretary of the university shall certify to the governor, under the university seal, the name of the persons so chosen as trustees, and shall also in a like manner certify the name of the person chosen by the executive board at any time to fill a vacancy.

Names of trustees to be certified to governor.

HISTORY.—R. S. § 4105-58; 84 v. 127, § 5.

SECTION 7980. The board of trustees so created shall meet in regular session at the university twice a year. The first meeting shall be on the third Thursday in June, and the second on the first Thursday in November of each year. Other meetings may be held at such places and times as a majority of the board determines. The trustees shall receive no compensation, but shall be reimbursed their traveling and other reasonable and necessary expenses out of appropriations under this sub-division of this chapter.

Meetings of trustees; their expenses.

HISTORY.—R. S. § 4105-59; 89 v. 368, § 6; 84 v. 127.

SECTION 7981. The board of trustees shall take, keep and maintain exclusive authority, directions, supervision and control over the operations and conduct of such normal and industrial department, so as to assure for it the best attainable results with the aid secured to it from the state. The board shall determine the branches of industry to be pursued, purchase through a suitable and disinterested agent, the necessary means and appliances, select a superintendent for the industrial branch of the department, fix his salary and prescribe his duties and authority. The expenditures of all moneys appropriated for carrying out the purposes and provisions of this subdivision of this chapter, shall be made only under such regulations and for such specific purposes not therein provided for, as the board of trustees of such department establish. No money appropriated by the state shall be used for any purpose not in direct furtherance and promotion of the objects of the department.

Powers and duties of trustees.

HISTORY.—R. S. § 4105-60; 84 v. 127, § 7.

Non-sectarian  
character of  
department.

SECTION 7982. No sectarian influence, direction or interference in the management or conduct of the affairs or education of such department shall be permitted by its board; but its benefits shall be open to all applicants of good moral character and within the limitations of age determined by the board.

HISTORY.—R. S. § 4105-61; 84 v. 127, § 8.

Bond of  
treasurer.

SECTION 7983. The treasurer of such department shall give to the state a bond to be approved by the attorney general in the sum of one thousand dollars conditioned that he shall faithfully discharge his duties and account for any money coming into his hands from the state. Such bond shall be deposited with the secretary of state and kept in his office.

HISTORY.—R. S. § 4105-62; 84 v. 127; 92 v. 275, § 9; 103 v. 528 (534); 106 v. 519.

Designation of  
pupils by  
members of  
general as-  
sembly.

SECTION 7985. Each senator and representative of the general assembly of the state may designate one or more youth resident of his district who shall be entitled to attend such normal and industrial department free of tuition.

HISTORY.—R. S. § 4105-64; 92 v. 275, § 11; 84 v. 127.

See Opinions of Attorney General (1915), p. 1827, cited under Sec. 7975.

How student  
fees credited;  
application of  
fund.

SECTION 7986-1. All receipts from student fees and deposits of the Ohio State University and of each state normal school and university receiving state aid, required by law to be paid into the state treasury, shall be credited therein to special funds to be appropriately designated by the names of the respective institutions from which they are received. Such funds shall be applied to the uses and purposes of such respective institutions and shall be used for no other purpose.

HISTORY.—108 v. Pt. II 1109.

For the appropriation of funds under this section, see 108 v. Pt. II 1109, § 2.

H. B. No. 325 (109 O. L. 360) construed.

## AN ACT

To provide a building fund for the Ohio state university and the universities supported by the state, and for the several state institutions.

*Be it enacted by the General Assembly of the State of Ohio:*

Building fund  
for Ohio  
State and  
other uni-  
versities sup-  
ported by the  
state.

SECTION I. For the purpose of providing a fund for the construction of necessary buildings at Ohio state university, Ohio university and Miami university, there shall be levied for the year 1921-1922 and for the year 1922-1923 on the grand list of taxable property of the state a tax of one hundred and twenty-five thousandths of one mill, which tax levy shall be outside of all tax limits prescribed by law, and which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute the educational building fund of the state.

For the purpose of providing a fund for the construction of necessary buildings and equipment thereof and for the repairs, remodeling or additions to the present buildings at the institutions under the supervision of the department of public welfare, there shall be levied for the year 1921-1922 and for the year 1922-1923 on the grand list of taxable property of the state a tax of twenty-five hundredths of one mill, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute the institutional building fund of the state, which tax levy shall be outside of all tax limits prescribed by law.

Tax levy for department of welfare.

HISTORY.—109 v. 360.

Under the provisions of section 154-40 G. C., found in H. B. 249, 109 O. L. 118, the authority to make contracts for the construction of buildings under the control of the state government, or any department, office or institution thereof, is given to the department of highways and public works. This section applies to contracts for the construction of the buildings at Ohio State University for which appropriations are made by H. B. 325, 109 O. L. 360.

Prior to the making by a state officer, board or commission of any contract involving the expenditure of money, the director of finance must, under the provisions of section 2288-2 G. C. (109 O. L. 130) first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations; but there is no requirement that he certify as to any balance in the fund in the state treasury upon which the appropriation is to operate. Said section merely requires that all contracts, agreements or obligations involving the expenditure of money, be brought within the amount set apart by the legislature for a particular purpose, and such setting apart may antedate the appearance of funds in the state treasury.

By reason of section 3 of H. B. 325 (109 O. L. 360) the appropriations of the proceeds of the educational building fund tax levy for the year 1921-1922 and for the year 1922-1923 take effect and are available on and after the first day of September, 1921, and for a period of two years thereafter. On said first day of September and during said period, contracts for the construction of necessary buildings at Ohio State University may be entered into, to an amount equivalent to that realizable from 72 per cent (the university's share) of said levy for both the year 1921-1922 and the year 1922-1923. Op. Atty. Gen. No. 2317, Aug. 12, 1921.

SECTION 2. There is hereby appropriated from the moneys raised or coming into the state treasury to the credit of the educational building fund, a sum equal to fourteen per centum of such fund for the uses and purposes of the board of trustees of Ohio university in the erection of necessary buildings and improvements not otherwise provided for; a sum equal to fourteen per centum of such fund for the uses and purposes of the board of trustees of Miami university for like purposes; and a sum equal to the remainder of the educational building fund, for the uses and purposes of the board of trustees of Ohio state university for like purposes. The sums hereby appropriated may, in the discretion of the several boards to which they are respectively appropriated,

Appropriation.



be allotted to building projects covered by specific appropriations for like purposes effective during the fiscal biennium commencing July 1, 1921, or to additional building projects. But no money shall be withdrawn from the treasury in pursuance of the appropriations herein made excepting for the construction of buildings in accordance with the requirements of sections two thousand three hundred and fourteen to two thousand three hundred and thirty-two, both inclusive, of the General Code, so far as the same may be applicable thereto.

HISTORY.—109 v. 360.

When appropriation available.

SECTION 3. The appropriations made by section 2 of this act shall take effect and be available on and after the first day of September, 1921, and shall be for the period of two years thereafter. The auditor of state is hereby authorized and directed to transfer from the general revenue fund to the educational building fund any moneys necessary to provide for expenditures in pursuance of such appropriations prior to the first semi-annual settlement of the tax levied by section 3 of this act and to reimburse the general revenue fund accordingly out of the proceeds of such settlement.

HISTORY.—109 v. 361.

#### DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS.

Department of highways and public works; powers and duties.

SECTION 154-40. The department of highways and public works shall have all powers and perform all duties vested by law in the superintendent of public works, the state highway commissioner, the chief highway engineer, and the state building commission. Wherever powers are conferred or duties imposed upon any of such departments, offices or officers, such powers and duties shall, except as herein provided, be construed as vested in the department of highways and public works.

In addition to the powers so transferred to it, the department of highways and public works shall have the following powers:

(1) To prepare, or cause to be prepared, general plans, specifications, bills of materials, and estimates of cost for the public buildings to be erected by the state departments, offices and institutions. Nothing in this section shall be so construed as to require the independent employment of an architect or engineer as provided by section two thousand three hundred and fourteen of the General Code, in the cases to which said section applies.

(2) To have general supervision over the erection and construction of public buildings erected for the state government, or any department, office or institution thereof, and over the inspection of all materials previous to their incorporation into such buildings or work.

(3) To make contracts for and supervise the construction and repair of buildings under the control of the

state government, or any department, office or institution thereof.

(4) To prepare and suggest comprehensive plans for the development of grounds and buildings under the control of the state government, or any department, office or institution thereof.

(5) To purchase all real estate required by the state government, or any department, office or institution thereof; in the exercise of which power such department shall have authority to exercise the power of eminent domain, in the manner provided by law for the exercise of such power by the superintendent of public works in the appropriation of property for the public works of Ohio, as heretofore defined; but this paragraph shall not affect the manner of the exercise of such powers by the department of highways and public works for highway purposes.

(6) To make and provide all plans, specifications and models for the construction and perfection of all systems of sewerage, drainage and plumbing for the state in connection with buildings and grounds under the control of the state government, or any department, office or institution thereof.

(7) To erect, supervise and maintain all public monuments and memorials erected by the state, except where the supervision and maintenance thereof is otherwise provided for by law.

(8) To procure, by lease, storage accommodations for the state government, or any department, office or institution thereof.

(9) To lease unproductive and unused lands or other property under the control of the state government, or any department, office or institution thereof, excepting school and ministerial lands.

(10) To lease office space in buildings for the use of the state government, or any department, office or institution thereof.

(11) To have general supervision and care of store rooms, offices and buildings leased for the use of the state government, or any department, office or institution thereof.

(12) To exercise general custodial care of all real property of the state.

Nothing in this section or in sections 154-37 or 154-41 of the General Code shall interfere with the power of the adjutant general to purchase military supplies, or with the custody by the adjutant general of property leased, purchased or constructed by the state and used for military purposes, or with the functions of the adjutant general as director of state armories.

Purchases for and custody of buildings of educational institutions administered by boards of trustees shall not be subject to the control and jurisdiction of the department of highways and public works.

HISTORY.—109 v. 118.

Under the provisions of section 154-40 G. C., found in H. B. 249, 109 O. L. 118, the authority to make contracts for the con-

struction of buildings under the control of the state government, or any department, office or institution thereof, is given to the department of highways and public works. This section applies to contracts for the construction of the buildings at Ohio State University for which appropriations are made by H. B. 325, 109 O. L. 360.

By reason of section 3 of H. B. 325 (109 O. L. 360) the appropriations of the proceeds of the educational building fund tax levy for the year 1921-1922 and for the year 1922-1923 take effect and are available on and after the first day of September, 1921, and for a period of two years thereafter. On said first day of September and during said period, contracts for the construction of necessary buildings at Ohio State University may be entered into, to an amount equivalent to that realizable from 72 per cent (the university's share) of said levy for both the year 1921-1922 and the year 1922-1923. Op. Atty. Gen. No. 2317, Aug. 12, 1921.

See Opinions of Attorney General No. 2317, (1921), cited under Sec. 2288-2.

Officers entitled to state documents.

SECTION 2281. Each judge, clerk of a court of record, justice of the peace, county officer, township or municipal officer, may receive from the county auditor one copy of the laws passed at each session of the general assembly. Each university, college, academy and county or state agricultural society may receive from the county auditor, one copy of each of the laws, journals, "Ohio General Statistics," or other publications of the state of Ohio sent to him by the secretary of state.

HISTORY.—S. & C. 828; R. S. §§ 68, 69; 70 v. 275, § 1; 71 v. 32, § 1; 72 v. 179, § 12; 72 v. 179, § 13; 82 v. 12; 106 v. 508 (515).



## CHAPTER 29

### SCHOOLS SPECIALLY ENDOWED

SECTION.		SECTION.	
7987.	Trustees for schools specially endowed.	7991.	Contracts with board of education of district in which school is located.
7988.	Organization of board; oath and bond.	7992.	Termination of contract if school becomes sectarian.
7989.	Filling vacancies; removal.	7993.	Accounts to be rendered.
7990.	Powers and duties of trustees.	7994.	Visitors.

SECTION 7987. When any person, by deed, devise, gift or otherwise, sets apart any lands, moneys or effects, as an endowment of a school or academy, not previously established, but does not provide for the management thereof, the common pleas court of the proper county shall appoint five trustees, who shall have the control and management of the property, moneys, and effects so set apart, and of the school or academy thus endowed. They shall hold their offices for five years, and until their successors are elected and qualified. But in making the first appointment the court shall appoint one trustee for one year, one for two years, one for three years, one for four years, and one for five years. The trustees shall be a body corporate, with perpetual succession, and by such name as may be ordered by the court making the first appointment.

Trustees for schools specially endowed.

HISTORY.—R. S. § 4105-67; 53 v. 33, § 1; S. & C. 1383.

The board of trustees of the Toledo university is a legal board vested with certain powers, and not a corporation: State, ex rel., Toledo, 3 O. C. C. (N. S.) 468, 13 O. C. D. 327.

For the appointment of trustees of the Toledo university, see State, ex rel., v. Toledo, 3 O. C. C. (N. S.) 468, 13 O. C. D. 327.

The city of Cincinnati, as a corporation, may take any trust, devise and bequest for charitable uses, and it may establish regulations necessary to carry out the objects of trust, in accordance with the wish or the donor thus expressed in the instrument, whereby such bequest is made: Perin v. Carey, 24 How. 465.

SECTION 7988. Immediately after their appointment the trustees shall organize by appointing a president, secretary and treasurer, from their own number, and severally take and subscribe an oath to faithfully discharge the duties of trustees, and deposit it with the county auditor. Before taking possession of the property, moneys or effects, constituting the endowment or trust, they severally shall give bond, in such sum as the court requires, with two or more sufficient sureties, to be approved by a judge thereof, whose approval must be indorsed on the bonds, conditioned for the faithful management of the property, moneys, and effects, entrusted to them and accountability therefor in such form as the court or judge may require. From time to

Organization of board; oath and bond.

time the court may require additional bonds and surety, as appears necessary for the preservation of the trust estate. The bonds required shall be payable to the state, and deposited in the office of the county auditor for safe keeping.

HISTORY.—R. S. § 4105-70; 53 v. 33, § 4; S. & C. 1383.

Filling vacancies; removal.

SECTION 7989. Such court annually shall appoint one trustee, to fill the vacancy then occurring; and at any other time fill vacancies that occur from any cause, for the unexpired term. Upon sufficient cause shown, reasonable notice of the time and place of hearing having been given to the party interested, such court may remove a trustee, and, until a hearing be had, suspend him in the exercise of his office.

HISTORY.—R. S. § 4105-68; 53 v. 23, § 2; S. & C. 1383.

Powers and duties of trustees.

SECTION 7990. From time to time, trustees may establish rules and regulations for the management and safe-keeping of the property, moneys, and effects, belonging to the trust, and the expenditure of the income thereof, and also for the management and government of the school or academy; which must be consistent with the terms of the deed, devise or gift, creating the endowment, and with the laws of this state. They shall not, at any time, or for any cause, incur any debt or liability, beyond the net income of the trust property, moneys, and effects, or use or appropriate it otherwise than to invest for the purposes of income, any part of the principal thereof, unless expressly authorized so to do by the terms of the deed, devise or gift, creating the endowment of trust.

HISTORY.—R. S. § 4105-69; 53 v. 33; S. & C. 1383; 98 v. 206, § 2.

Contracts with board of education in which school is located.

SECTION 7991. The trustees of any school heretofore established under the provisions hereof, and in no way connected with any religious or other sect, or any established school administered as a non-sectarian institution, and the board or boards of education of the district or districts in which such school is situated, may make contracts whereby such trustees receive into the school, pupils from such district or districts, who shall receive such instruction as is, or may be, provided by law for public schools in this state. In consideration of such service by such trustees, such board, under the general restrictions of the law relating to common schools, in so far as they are applicable and not inconsistent herewith, may contribute to the maintenance of such school, and pay such part of the costs of the erection of additional buildings, and upon such conditions, not inconsistent with the deed, devise or gift under which the school is established, as is agreed upon by such board and such trustees.

HISTORY.—S. & C. 1383; R. S. § 4105-69; 53 v. 33; 98 v. 206, § 3; 107 v. 548.

Neither a contract entered into under section 7991 of the General Code between a board of education and the trustees of a private academy nor the making of a levy for the support of a

private academy by the board of education of a school district under sections 7673 and 7674 of the General Code, as amended 107 O. L. 548, is effectual to constitute the private school with which such agreement or arrangement is made the high school of the district within the purview of the section authorizing the recovery of tuition for the attendance of non-resident pupils.

Even if this were not so, any right of recovery on account of such tuition would be limited to the board of education of the district making such agreement or arrangement and would not exist as against the board of education of any other district in favor of the management of the academy.

The rights, if any, of the academy against the board of education making the arrangement or agreement referred to would not be in the nature of a claim for tuition, but would be predicated upon the agreement in the one instance and the making of the tax levy in the other. Op. Atty. Gen. (1917), p. 2369.

SECTION 7992. But after the making of such contract if such school becomes sectarian or in any way connected with any religious or other sect the contract thereupon shall terminate. When, for such cause, a contract terminates, no right, title, or interest in or to any building toward the cost of which the board of education contributed shall pass to the trustees until full compensation has been made to the board for the contribution made by it to the construction of such building.

Termination  
of contract if  
school becomes  
sectarian.

HISTORY.—R. S. § 4105-69; 53 v. 33; S. & C. 1333; 98 v. 206, § 3.

SECTION 7993. On the second Monday of September, in each year, and at such other times as the court requires, the trustees shall render a full and accurate account, statement, and exhibit, of the condition of the school or academy under their management, and the condition of the trust estate and funds; and cause it to be published in such form as the court directs. Such account, statement, and exhibit, shall be sworn to by the president, secretary, and treasurer, or two of them.

Accounts to  
be rendered.

HISTORY.—R. S. § 4105-71; 53 v. 34, § 5; S. & C. 1333.

SECTION 7994. The common pleas court of the proper county, annually, at the first session after the second Monday in September, shall appoint three competent and disinterested persons, who may visit any such school or academy, examine it together with the condition of the trust estate or endowment, and shall report thereon to such court. The court shall also authorize such other visitations and examinations as appear to be necessary.

Visitors.

HISTORY.—R. S. § 4105-72; 53 v. 34, § 6; S. & C. 1333.



## CHAPTER 30

### EDUCATIONAL CORPORATIONS

#### SECTION.

8656. Term and number of trustees.  
 9922. When trustees of incorporated college, university or other institution of learning may appoint president, professor, etc.; adoption of by-laws.  
 9923. College or university not to confer degrees until certificate of superintendent of public instruction filed with secretary of state.  
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 9925. Who to constitute faculty; powers.  
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#### SECTION.

9953. Copy of acceptance to be filed with secretary of state.  
 9954. Number of trustees and classes.  
 9955. Election; term; vacancies; increase of board.  
 9955-1. Interchangeable use of the words "academy," "college" and "university."  
 9955-2. Use of interchangeable words does not affect the right or title to any gift, grant, devise or bequest.  
 9956. Assessments on stockholders.  
 9957. Meeting of stockholders; notice.  
 9958. How amount of assessment fixed.  
 9959. Limit of assessment and collection.  
 9960. Board of military academies.  
 9961. Board of visitors.  
 9962. Duties of board of visitors.  
 9963. How term of trustees fixed.  
 9964. Certain corporations may change location.  
 9965. Sale and distribution of property of certain corporations.  
 9966. How charter of incorporated university or college may be amended.  
 9967. Copy of amendment to be filed with secretary of state.  
 9968. Fee of secretary of state.  
 9969. College may change name or purpose.  
 9970. Procedure and effect.  
 9971. Fees of secretary of state.  
 9972. Association incorporated for purpose of promotion of fine arts, science, etc., may provide as to trustees or directors and establish their rules.  
 9973. May add to original objects.  
 9974. Acceptance of statutory provisions.  
 9975. Accounts of receipts and disbursements.  
 9976. Trustees ineligible to other office.  
 9977. Attorney-general may enforce duties of officers.  
 9978. May increase number of trustees of certain corporations.  
 9979. Distribution of new members.  
 9980. How university or college incorporated as stock company may retire stock and become a corporation for profit.  
 9981. Cancellations by decree of court.  
 9982. Mechanics' institute may borrow money.  
 9983. Liability of directors and trustees.  
 9984. How medical colleges may receive bodies for dissection.  
 9985. Body to be delivered to claimant.  
 9986. Interment of body after dissection.  
 9987. Notification of relatives.  
 9988. Body of strangers or travelers.  
 9989. Liability for having unlawful possession of body.

Term and number of trustees.

SECTION 8656. Religious corporations, and institutions incorporated for the purpose of promoting education, science or art, may prescribe the time trustees thereof may hold their offices, except that the term of none shall exceed in number of years the number of its trustees.

HISTORY.—R. S. § 3240; 78 v. 200; 80 v. 79; 85 v. 166; 95 v. 547.

SECTION 9922. When a college, university, or other institution of learning incorporated for the purpose of promoting education, religion, morality, or the fine arts, has acquired real or personal property, of twenty-five thousand dollars in value, has filed in the office of the secretary of state a schedule of the kind and value of such property, verified by the oaths of its trustees, such trustees may appoint a president, professors, tutors, and any other necessary agents and officers, fix the compensation of each, and enact such by-laws consistent with the laws of this state and the United States, for the government of the institution, and for conducting the affairs of the corporation, as they deem necessary. On the recommendation of the faculty, the trustees also may confer all the degrees and honors conferred by colleges and universities of the United States, and such others having reference to the course of study, and the accomplishments of the student, as they deem proper.

When officers may be appointed and degrees conferred.

HISTORY.—R. S. § 3726; 50 v. 128, § 1; 51 v. 403, §§ 2, 3; S. & C. 266; S. & C. 270; 99 v. 262.

Board of directors may accept trusts, see G. C. § 7915.  
Wilberforce, see G. C. § 7975, et seq.

For decisions under special charters and former statutes, see *State v. Farmers College*, 32 O. S. 487; *College v. Cary*, 35 O. S. 648; *Library Association v. Pelton*, 36 O. S. 253; *Johnson v. Otterbein University*, 41 O. S. 527.

The plaintiff in error is a corporation organized under a special act passed in 1845. It was not organized for profit and has made none. Its object was the maintenance of a college for instruction in dental surgery. Its capital consists of \$12,000 in real estate, derived from the proceeds of one hundred and twenty certificates of shares which certify that the holder of each share "is entitled to one share of the real estate property of the college, drawing an interest of six per cent." On the margin of each certificate, and a part of it, is: "Shares, one hundred dollars each." At this sum each certificate was valued and sold. All the shareholders, are dentists and members of the corporation. Its capital—the real estate above mentioned—has always constituted its entire property. During its existence (a period of about forty years) no interest has been collected or paid on any share. It is still a going corporation, and its capital—the real estate—is indispensable to its existence. The plaintiff below, a shareholder, brought his action, in 1882, to recover a money judgment for interest on his share. It was held that the action is not maintainable: *Ohio College of Dental Surgery v. Rosenthal*, 45 O. S. 183.

Whether a diploma presented by one who desires a certificate authorizing him to practice medicine is from "a medical institution in good standing" is to be determined, in the first instance, not by the court, but by the state medical board: *State, ex rel., v. Medical College*, 60 O. S. 122.

An institution incorporated for the purpose of "the education of suitable persons in the art and science of curing diseases by the use of air, baths, electricity, heat magnetism, massage and all other resources of nature," does not offend against the law of its creation by imparting instruction concerning the administering of drugs: *State, ex rel., v. Medical College*, 60 O. S. 122.

The writ of mandamus will not issue on the relation of a medical college to compel the state medical board to recognize the college as a medical institution in good standing, not to compel the board to issue certificates to practice medicine in this state to holders of diplomas from such college: *State v. Coleman*, 64 O. S. 377.

A university which has been incorporated by the state, and which is exempt from taxation, but which has received no other

state aid, and which has been endowed by private persons, and which charges tuition, is a private corporation; and the courts have no power to regulate or control its internal management as long as its trust funds are not diverted from the purpose for which they were given. Accordingly, the courts can not review the action of such university in dismissing a pupil for a violation of its rules, even though he has paid his tuition: *Koblitz v. Western Reserve University*, 21 O. C. C. 144, 11 O. C. D. 515.

The board of trustees of the Ohio university is not a corporation, and it can not sue or be sued in the United States courts: *Thomas v. Ohio State University*, 70 O. S. 92.

The board of trustees of the Ohio agricultural and mechanical college is a branch of the state of Ohio, and is not a corporation: *Neil v. Trustees*, 31 O. S. 15.

To determine scientifically the damages a person might suffer by reason of being kept out of the enjoyment of a particular degree from a particular school is impossible, and, since the science of medicine is highly technical, no layman is qualified to determine the damages accruing from the faculty's giving, fairly or unfairly, a passing grade, thereby depriving a student of his medical degree: *Sutton v. University*, 12 O. L. R. 539, 60 Bull. 33.

The trustees of a college or university in conferring degrees are, under this section, dependent upon the recommendation of the faculty. Accordingly, a student of medicine, after having failed five times in one subject and three in another, can not be heard to say that the university in which he has matriculated is guilty of a breach of contract in failing to confer the degree of medicine upon him, but is subject to the statutory restriction of securing the faculty's recommendation therefor: *Sutton v. University*, 12 O. L. R. 539, 60 Bull. 33.

No institution of learning may legally confer any degree pertaining or in respect to any course of study, unless as to that particular course of study such institution has complied with the provision of sections 9922 and 9923 G. C. as amended 104 O. L. 236. *Op. Atty. Gen.* (1916), p. 1554.

The certificate required to be filed in the office of the secretary of state under provision of section 9922, G. C., should contain a schedule of the kind and value of the property owned by the institution mentioned in said section and the statement of the value of said property should be verified by the oaths of the trustees of said institution. *Op. Atty. Gen.* (1915), p. 1614.

Certificate to be filed with secretary of state.

SECTION 9923. But no college or university shall confer any degree until the president or board of trustees thereof has filed with the secretary of state a certificate issued by the superintendent of public instruction that the course of study in such institution has been filed in his office, and that the equipment as to faculty and other facilities for carrying out such course are proportioned to its property and the number of students in actual attendance so as to warrant the issuing of degrees by the trustees thereof.

HISTORY.—S. & C. 266; S. & C. 270; R. S. § 3726; 50 v. 128, § 1; 51 v. 403, §§ 2, 3; 99 v. 262; 104 v. 225 (236).

See Opinions of Attorney General as follows:  
(1916), p. 1554, cited under Sec. 9922.  
(1915), p. 1614, cited under Sec. 9922.

May hold donated property in trust.

SECTION 9924. A university, college, or academy, or the trustees thereof, may hold in trust any property devised, bequeathed or donated to such institution, upon any specific trust consistent with the objects of the corporation.

HISTORY.—R. S. § 3727; 50 v. 128, § 5; S. & C. 267.



If a subscription is made to an institution of learning for the purpose of paying future obligations, and liabilities are incurred in reliance upon such subscription, a sufficient consideration exists, and such subscription can be enforced: *Wesleyan College v. Love's Executor*, 16 O. S. 20; *Irwin v. University*, 56 O. S. 9 [affirming *Irwin v. Webster*, 7 O. C. C. 269, 4 O. C. D. 590]; *Durrel v. Belding*, 4 O. C. D. 263, 9 O. C. C. 74; *Hooker v. College*, 13 Dec. Rep.; 2 C. S. C. R. 353.

A subscription to a fund for paying pre-existent debts of a college is without consideration and can not be enforced: *Johnson v. Otterbein University*, 41 O. S. 527.

That a gratuitous subscription can not be enforced, see *Sutton v. University*, 7 O. C. C. 343, 4 O. C. D., 627 [affirmed, without report, *University v. Sutton*, 54 O. S. 665].

A devise to a university by will executed within a year before the death of the testator, who dies, leaving issue of his body, is invalid by G. C. § 10504; but if the daughter of such testator confirms such devise, the nephews of such testator to whom the property is given in case the daughter does not devise, can not attack such gift: *Ohio State University v. Folsom*, 56 O. S. 701.

If such daughter has confirmed such devise by deed, her heirs after her death can not recover the property thus devised: *Thomas v. University*, 70 O. S. 92.

Property may be devised to the city of Cincinnati in trust for establishing and maintaining colleges for the education of boys and girls; and such city may take such gift in trust: *Perin v. Carey*, 65 U. S. (24 How.) 465, 3 O. F. D. 634.

SECTION 9925. The president and professors shall constitute the faculty of any incorporated literary college or university, may enforce the rules and regulations enacted by its trustees for the government and discipline of the students, and suspend and expel offenders, as they deem necessary.

Who to constitute faculty; powers.

HISTORY.—R. S. § 3728; 50 v. 128, § 6; S. & C. 267.

The courts can not review the expulsion of a student by a private educational corporation: *Koblitz v. Western Reserve University*, 21 O. C. C. 144, 11 O. C. D. 515.

The faculty of a college or university may regulate matters of discipline, and other matters not so regulated by the board of trustees, as they deem best. The faculty acting as a whole may enforce such regulations, or it may by proper action transfer the power of enforcing such regulation to the president, and may also designate an assistant to the president of the college in the enforcing of such rules, to act in conjunction with the president or in his place when he is absent from the college or university. *Op. Atty. Gen.* (1914), p. 421.

SECTION 9926. Any incorporated university, college, or academy may connect therewith, to be used as a part of its course of education, mechanical shops and machinery, or lands for agricultural purposes not exceeding three hundred acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural operations of such institution.

May acquire machinery and land.

HISTORY.—R. S. § 3729; 50 v. 128, § 8; S. & C. 267. *Mechanics' institute*, see G. C. § 9982.

SECTION 9927. Any company formed in pursuance of this title or which exists by virtue of a special act of incorporation, the property of which is held as stock, and not derived by donation, gift, devise, or gratuitous subscription, may change its capital stock into scholarships

May change stock into scholarships.

when it becomes necessary for the purpose of carrying out the object for which it was formed, in the mode provided in this title for increasing the capital stock of corporations.

HISTORY.—R. S. § 3730; 50 v. 128, §§ 9, 10; S. & C. 268.

A college which is incorporated as a private corporation for educational purposes has power to receive subscriptions to its endowment fund, but in return therefor to give instruction free, either for a limited period or perpetually, according to the amount of the endowment: *College v. Carey*, 35 O. S. 648.

Location may  
be changed.

SECTION 9928. A college, university or other institution of learning, existing by virtue of an act of incorporation, or that hereafter becomes incorporated for any of the purposes specified in this chapter, if three-fourths of the trustees or directors thereof deem it proper, or if the institution is owned in shares, or by stock subscribed or taken, by a vote of the holders of three-fourths of the stock or shares, may change the location of such institution, convey its real estate, and transfer the effects thereof, and invest them at the place to which such institution is removed. No such removal shall be ordered, and no vote taken thereon, until after publication in the manner provided by law in case of a sale and distribution of the property of such an institution in which notice shall be fully set forth the place to which it is proposed to remove the institution. In case of removal, a copy of the proceedings of such meeting shall be filed with the secretary of state.

HISTORY.—R. S. § 3731; 52 v. 77, § 12; S. & C. 268.

How endow-  
ment fund  
diverted.

SECTION 9929. The trustees of a corporation incorporated to create, hold and manage a college endowment fund, the articles of incorporation of which provide that the fund may be applied to any object not inconsistent with the purposes of education different from that particularly specified therein, may apply to the common pleas court in the county where the corporation is located for permission to make such change, designating particularly the purposes to which it is proposed to apply the fund. On being satisfied that such change is not inconsistent with the object of the original creation and institution of the fund, the court shall authorize and sanction it.

HISTORY.—R. S. § 3732; 51 v. 393, § 2; S. & C. 269.

The property of a private eleemosynary corporation, although charged with the maintenance of a college, or other "public charity," is private property within the meaning and protection of that clause of § 19, of the constitution of this state, which declares that "private property shall ever be held inviolate": *State ex rel., v. Neff*, 52 O. S. 375.

The result of the statute passed April 15, 1892 (89 v. 647), relating to the Cincinnati college, which, in terms, gives absolute control and management of the affairs and property of the Cincinnati college to the directors of the university of Cincinnati, is to take the property of the former and donate it to the latter institution. The statute, therefore, conflicts with Art. I, § 19, of the constitution of this state, and is void: *State, ex rel., v. Neff*, 52 O. S. 375.

SECTION 9930. When a vacancy occurs in whole or in part, in the board of trustees of an incorporated college, seminary, or academy, by reason of an amendment of the charter thereof, or from other cause, and there is no provision of law for filling it, within three months after receiving information thereof, the governor shall appoint the required number of trustees, one-third thereof to serve for one year, one-third for two years, and one-third for three years.

Vacancies  
caused by  
amendment  
of charter.

HISTORY.—R. S. § 3733; 75 v. 25, § 2.

1. Ohio university lands held under leases executed prior to 1843 are subject to revaluation notwithstanding the act of the general assembly of Ohio, passed in that year, and declaring the true intent and purpose of the original acts pertaining to Ohio university to be otherwise.

2. The original act, providing for the leasing of such lands, provided that at the expiration of the principal term of the leases the lands should be revalued and the rent should be fixed upon the basis of the average price of a bushel of wheat in a certain market, for a given number of years. This price was to be determined through the agency of referees, one of whom was to be appointed by the university, another by the lessees and the third by the two thus chosen; but in the event of the failure of the parties to designate one or more referees, the legislature at its next session should appoint such number of referees as the case might require.

(a) On account of the change in the constitution, the legislature may not appoint referees, but without impairing the obligation of the subsisting contracts it may, in a proper case, pass a law providing for the appointment of such referees.

(b) The provisions of the act, which are to be read into the leases executed under it, may now be complied with, notwithstanding the fact that they have been ignored for many years, the laches of the state and the university not being effective to deprive the trust of their benefit.

(c) The revaluation which is to be made at the end of the principal term of the lease would remain effective only until the expiration of the period of twenty years from the time when that term expired.

(d) The action of the legislature need not be "at the next session thereof," this provision being directory, merely.

(e) While the provision for a revaluation at the end of the term and the proceedings therefor are separate and distinct from the provision for fixing the basis of rent, and the proceedings therefor, it should not be assumed by the legislature that the parties have failed to appoint referees until the trustees of Ohio university have taken steps toward a revaluation, and perhaps until they have appointed one referee in accordance with the terms of the original act.

3. It being suggested that possibly the board of trustees of Ohio university is not at present a legally constituted body by reason of supposed defects in the manner in which the members thereof have been appointed, but such a fact, if true, would not affect the existence of the corporation known as "the president and trustees of Ohio university," and appropriations made by the general assembly for the use of the institution could not be withheld on that account. Op. Atty. Gen. (1914), p. 1566.

SECTION 9931. A college, university, academy, seminary, or other institution devoted to the promotion of education, existing by virtue of a special act of incorporation, or organized under the provisions of any law, whose property came and is held by donation, gift, purchase, devise, or gratuitous subscription, and the amount of which,

May increase  
property.



or the income arising therefrom is limited by such special act, or the articles of association adopted by such institution, may receive, acquire, possess and hold any amount of property, real, personal or mixed, which its board of directors or trustees, for the institution accepts, and by its trustees, sell, dispose of and convey it. But such property shall not be diverted from the express will of the donor, deviser or subscriber.

HISTORY.—R. S. § 3734; 90 v. 71; 53 v. 170, § 1; S. & C. 368.

The creation of a fund to pay pre-existing debts of a university is not a consideration for the promise to pay money to such fund: *Johnson v. University*, 41 O. S. 527.

Temporary  
loans secured  
by mortgage,  
authorized.

SECTION 9932. The board of trustees of such a college, university, academy, seminary, or other institution devoted to the promotion of education, in anticipation of donations to be received and collections to be made, for the purpose of constructing, enlarging or adding to college buildings or improvements, may borrow such sum of money, upon such terms and with such conditions and provisions as they determine to be necessary therefor, by temporary loans without mortgage or by the issue of bonds or notes and secure them by a mortgage upon the property on which such improvement is to be made, if the property is not held by them under some specific trust.

HISTORY.—R. S. § 3734; 90 v. 71; 53 v. 170, § 1; S. & C. 368; 109 v. 21.

Statement to  
be filed.

SECTION 9933. Before such an institution shall be authorized to acquire and hold additional property, the trustees thereof, at a regular meeting of their board, or at a special meeting called for that purpose, from time to time shall make and sign a statement specifying the amount of additional property which they seek to acquire and hold, and set forth therein the purposes to which it is to be devoted, which statements shall be entered at large upon the record book of the trustees and be filed in the office of the secretary of state.

HISTORY.—R. S. § 3735; 90 v. 72; 53 v. 170, § 2; S. & C. 368.

How certain  
boards may be  
constituted  
and governed.

SECTION 9934. The board of trustees of any university or college heretofore incorporated, or which may hereafter be incorporated, and operating under the patronage of one or more conferences or other religious bodies of any religious denomination, may accept the provisions of this and succeeding sections 9935, 9936, 9937, 9937-a, 9939, 9941, 9942 and 9943 by resolution adopted at any regular meeting of the board, and entered upon the record of its proceedings. After such acceptance the board in all respects shall be organized, constituted, regulated and perpetuated, pursuant to and under said provisions. No right acquired by any such board, university or college, under its charter or any law of this state, shall in any way be affected thereby.

HISTORY.—S. & S. 106; R. S. § 3736; 65 v. 183, § 1; 104 v. 171.

SECTION 9935. The president of such university or college shall, ex-officio, be a trustee after the acceptance of the provision of this act by any such university or college. At any meeting of such board after the passage of this act [G. C. §§ 9935 and 9937], such board shall divide its number, not including such president, into classes, making one class for each conference or religious body at the time patronizing such university or college, and one class for the alumni of such university or college and one class of trustees at large. No class shall have more than ten members. Each conference or other religious body patronizing such university shall have the same number of trustees. The board of trustees of such university or college may designate the number of trustees to be assigned to the alumni association and to the class of trustees at large, but the combined number of trustees apportioned to said patronizing conferences of other religious bodies shall constitute majority of the entire board, not including the president.

Trustees to be divided into classes; president ex-officio member; limitations and designations.

HISTORY.—S. & S. 106; R. S. § 3737; 65 v. 188, § 2; 104 v. 171; 107 v. 636.

SECTION 9936. The regular term of office of such trustees shall be five years, but upon the original formation of classes of trustees one or more trustees may be elected for one, two, three and four-year terms until the regular order can be established. The term of office of an equal number of trustees in each class, as near as may be, shall expire each year. Vacancies which occur in any class of trustees in any manner whatsoever except by expiration of time shall be filled only for the remainder of the term, but the term of office of a trustee shall not expire during any meeting of the board which does not continue for more than two weeks.

Term of office of trustees; vacancies.

HISTORY.—S. & S. 107; R. S. § 3738; 65 v. 188, § 3; 70 v. 157, § 1; 104 v. 171.

The fact that a trustee of the Ohio university removes from the state does not of itself create a vacancy in his position of trust; it simply authorizes the court to declare a vacancy upon a regular hearing: *State v. Bryce*, 7 O. (pt. 2) 82.

SECTION 9937. If the number of conferences or other religious bodies patronizing such university or college shall at any time be increased or decreased, the board of trustees of such university or college may re-classify said trustees of said bodies by an equal reduction of the number in each such class when a new conference or other religious body becomes a patronizing body and by an equal increase of the number in each such class when a conference or other religious body ceases to be a patronizing body. Whenever, by reason of a change in the number of patronizing conferences or religious bodies, it becomes necessary to re-classify the trustees in said board, and whenever said board deems it proper, for any other reason, to increase or decrease its total membership, within the limits established

Re-classification and re-apportionment of trustees.

by section 9935 the board (a lawful quorum being present) shall by appropriate resolution designate the number of trustees apportioned to each class and certify such apportionment to each patronizing conference or other religious body and to such alumni association, and all vacancies in such class thereafter shall be filled in accordance with such apportionment.

HISTORY.—S. & S. 107; R. S. § 3739; 89 v. 119; 65 v. 188, § 4; 104 v. 171 (172); 107 v. 636 (637).

The alumni association may elect one-fifth of board.

SECTION 9937-a. The alumni composing the alumni association of such university or college may elect as members of the board of trustees of such university or college, as many members of such alumni association as there are members of the class of alumni trustees assigned or apportioned to said alumni association by the board of trustees of such university or college, this class to constitute not less than one-fifth of the entire board, not including the president. This election shall be held under such regulations as the alumni association may prescribe and the result shall be certified by the proper officials of the alumni association to the board of trustees, which result shall be entered upon the records of said board. Such board of trustees composed of alumni trustees and trustees elected by patronizing conferences or other religious bodies, as provided in section 9935 to section 9937-a inclusive, may increase its own numbers by the election of a class of trustees at large, the number of which class shall be fixed by said board of trustees, under the limitations fixed by sections 9935 and 9937-a.

HISTORY.—104 v. 171 (172).

How a conference may become a patron.

SECTION 9939. Any conference or other religious body not patronizing any particular university or college may become a patronizing body upon invitation of the board of trustees of such university or college by a majority vote of the whole board. The intention to become such patronizing body shall be evidenced by the adoption of an appropriate resolution and certification of the same to the board of trustees of such university or college, and such certified resolution shall be entered upon the minutes of the board of trustees of such university or college thereby completing the right of such conference or religious body to act as a patronizing body.

HISTORY.—S. & S. 107; R. S. § 3741; 65 v. 188, § 6; 104 v. 171 (172).

When right of representation shall cease.

SECTION 9941. If a conference or other religious body patronizing a university or college and having a representation in its board of trustees, ceases to exist, or ceases to patronize such university or college, the right of such conference or other religious body to such representation shall cease, and the board of trustees of such university or college shall apportion or distribute the number of trustees in such class to the remaining patronizing confer-



ences or other religious bodies in order to maintain, as nearly as may be, the established number of trustees, and equality of representation from each patronizing body.

HISTORY.—S. & S. 107; R. S. § 3743; 65 v. 188, § 8; 73 v. 163; 104 v. 171 (173).

SECTION 9942. Before a conference or other religious body represented in the board of trustees of such university or college shall cease to be represented in said board, the board of trustees shall declare and enter in the record of its proceedings that the conditions and contingencies terminating such representation have taken place.

Action must be taken by board.

HISTORY.—S. & S. 107; R. S. § 3744; 65 v. 188, § 9; 104 v. 171 (173).

SECTION 9943. Eleven trustees shall constitute a quorum of the board of any such university or college, whatever the number of trustees if more than twenty is or may become; but when the number is twenty or less, a majority thereof shall constitute a quorum.

Quorum; how constituted.

HISTORY.—R. S. § 3745; 65 v. 188, § 10; S. & S. 108.

SECTION 9948. The trustees of a corporation incorporated for the purpose of creating a fund, the income of which is to be applied to the promotion of education, may receive subscriptions for membership in the corporation, and they, or a majority of them, by giving ten days' notice, by publication in the county where the corporation is located, may call a meeting of members to adopt by-laws, and elect not more than nine directors. Each member shall have a vote for every amount by him subscribed equal to that in the articles of incorporation specified as necessary for membership, which may be cast in person or by proxy, but at no subsequent meeting can a member vote for or be eligible as a director who is in arrears to the corporation. The trustees shall control the funds and disburse the income of the corporation as provided by its by-laws.

Endowment fund corporations.

HISTORY.—R. S. § 3750; 69 v. 173, §§ 1, 2, 3, 4, 5.

SECTION 9949. The board of trustees of a university, college or other institution of learning, incorporated, and acting under the patronage of one annual conference or other religious body of a religious denomination, may accept the provisions of this and the succeeding section, by resolution adopted at a meeting of the board, and entered upon the record or journal of its proceedings. After such acceptance the board shall be organized, constituted, regulated, and perpetuated as therein provided. No right acquired by such board, university, or other institution of learning, under its charter, or any law of this state, shall be impaired or affected thereby.

How certain boards constituted and governed.

HISTORY.—R. S. § 3751; 69 v. 180, § 1.

SECTION 9950. The board of trustees of a university or college heretofore incorporated, and now under the patronage of one annual conference, synod or other religious body of a religious denomination, may increase the

Increase in number of trustees in certain corporations.

number of its trustees, not exceeding six. Such additional trustees shall be nominated by the collegiate alumni of the university or college from the collegiate alumni of three years' standing, for appointment or election by such patronizing conference or synod, under such regulations as are prescribed by such board, if it determines to increase the number of its trustees and makes such regulations for their nomination, by resolution adopted at a regular meeting of the board and duly entered on the record of its proceedings, and, such patronizing or governing conference or synod consents to the increase and the rules and regulations for their nomination. And after such board is so increased by not exceeding six additional trustees, in all respects it shall be organized, constituted, regulated and perpetuated pursuant to and under its charter, and such provisions. No rights acquired by such a board, university or college, under its charter or any law of this state, shall be affected or impaired thereby.

HISTORY.—R. S. § 3751a; 91 v. 155.

Colleges under ecclesiastical patronage.

SECTION 9951. A corporation may be formed for the promotion of academic, collegiate or university education, under religious influences, may set forth in its articles or certificate of incorporation, as a part thereof, the name of the religious sect, association or denomination with which it is to be connected, and grant any ecclesiastical body of such religious sect, association or denomination, whether it be a conference, association, presbytery, synod, general assembly, convocation or otherwise, the right to appoint its trustees or directors, or any number thereof. It also may set forth in its articles or certificate such other rights as to the administration of the purpose for which it is organized, consistent with the laws of this state and of the United States, as the incorporation desires to confer upon the ecclesiastical body of such sect, association or denomination, and that body may exercise all rights and powers set forth therein.

HISTORY.—R. S. § 3751b; 94 v. 331.

A municipal corporation may become a trustee for an educational institution: *Perin v. Carey*, 65 U. S. (24 How.) 465, 3 O. F. D. 634.

How existing corporations may avail themselves of the provisions.

SECTION 9952. A corporation formed for the promotion of academic, collegiate or university education, under religious influences, incorporated under the laws of this state, by special act or otherwise, may avail itself of the provisions of the preceding section, as a part of its articles or certificate of incorporation, and may confer on an ecclesiastical body of such religious sect, association or denomination, it is or proposes to be connected with, whether it be a conference, association, presbytery, synod, general assembly, convocation or otherwise, any or all of the rights, powers or privileges by such section allowed to be conferred on corporations hereafter organized, and may accept the

provisions by a vote of the majority of its trustees at any regular meeting.

HISTORY.—R. S. § 3751c; 94 v. 331.

SECTION 9953. When so accepted, a copy of the acceptance, certified by the secretary or clerk of its board of trustees or directors, shall be sent to the eccleasical body with which it is or proposes to be connected. If such body agrees to accept the powers proposed to be conferred upon it, it shall certify its approval upon the certified copy so sent, and it thereupon shall be filed in the office of the secretary of state. When thus filed it will be a part of the charter of such corporation, and such ecclesiastical body shall exercise all the rights and powers so set forth in the articles or certificate of corporation.

Copy of acceptance to be filed with secretary of state.

HISTORY.—R. S. § 3751c; 94 v. 331.

SECTION 9954. After such acceptance the board shall certify it to the patronizing conference or other religious body having the right to elect or appoint trustees of such university or other institution of learning, at the next meeting of such conference or other religious body; and thereafter the board shall consist of twenty-one trustees elected or appointed, and the president of such university or other institution of learning, who shall be ex-officio a member thereof. Such elected or appointed trustees shall be divided into three classes of seven members each.

Number of trustees and classes.

HISTORY.—R. S. § 3752; 85 v. 140, 141; 69 v. 180, §§ 2, 3; 70 v. 157, § 1.

SECTION 9955. At the first election or appointment after such acceptance, one of such classes shall be elected or appointed for one year, one for two years and one for three years. In subsequent elections or appointments each of the classes of trustees shall be elected or appointed for three years. No term of office of such a trustee shall expire during a meeting of the board which does not continue more than two weeks. Ten members of the board shall constitute a quorum. Vacancies which occur in any class of trustees otherwise than by expiration of the term of office shall be filled only for the remainder of the term. Such a university or other institution of learning which heretofore accepted the provisions of sections ninety-nine hundred and forty-nine, ninety-nine hundred and fifty-four, and ninety-nine hundred and fifty-five, may increase its board of trustees by electing or appointing two additional members in each of the classes of trustees herein provided for.

Election; term; vacancies; increase of board.

HISTORY.—R. S. § 3752; 85 v. 140, 141; 69 v. 180, §§ 2, 3; 70 v. 157, § 1.

SECTION 9955-I. A corporation formed for the promotion of academic, collegiate or university education under religious influences, and connected with any religious sect, association, or denomination, and to which, whether it be a conference, association, presbytery, synod, general-as-

Interchangeable use of the words "academy," "college," and "university."



sembly, convocation, or otherwise, it has granted the right to appoint its trustees or directors, or any number thereof, and which has incorporated into its charter or certificate of incorporation as a part of its corporate name either one or more of the words "academy," "college," or "university," may use one or more of said words not so incorporated therein interchangeably with said word or words which may have been incorporated therein to the same extent and as fully as the word or words so incorporated therein has or have been heretofore used in the name of such corporation, when authorized so to do by a resolution adopted by a majority vote of its trustees, or directors at any regular meeting, or special meeting called for that purpose. Provided that a copy of such resolution certified by the clerk or secretary of such trustees or directors, and accompanied by a resolution of consent passed by such one of such ecclesiastical bodies as aforesaid, with which such corporation is connected, and certified by its clerk or secretary, shall first be filed in the office of the Secretary of State, and a certified copy thereof shall have been issued to and received by said clerk or secretary of such trustees or directors.

HISTORY.—104 v. 3.

Use of interchangeable words does not affect the right or title to any gift, grant, devise or bequest.

SECTION 9955-2. Nothing herein contained, or the interchangeable use of said word or words, as herein provided and authorized, shall be held or construed as abolishing the use of the original corporate name of such corporation, or as affecting the title, right or possession of such corporation to, or of, any gift, grant, devise, or bequest heretofore, or hereafter made to it, whether the same shall have been made or shall be made in the original corporate name, or in one or more of said interchangeable names, or in all of such names: And the use of such original incorporate name, or one or more of such interchangeable names shall be held and construed as vesting in such corporation all gifts, grants, devises, and bequests as fully and to the same extent as if the same had been made in the name of the original incorporated name.

HISTORY.—104 v. 3.

Assessments.

SECTION 9956. The proportion that each stockholder of a college, academy, university, seminary, or other institution for the promotion of education, shall be required to pay to meet the debts and liabilities of the corporation, may be determined and collected in the manner provided by the three succeeding sections.

HISTORY.—R. S. § 3753; 58 v. 20, § 1; S. & S. 108.

Meeting of stockholders; notice.

SECTION 9957. The trustees of such corporation desiring to avail themselves of such provisions shall call a meeting of the stockholders for the purpose of determining what amount of its indebtedness shall be paid by each stockholder, and give thirty days' notice to the stockholders

in writing or by publication in some newspaper of general circulation in the county where the corporation is located, of the time, place, and purpose of the meeting, at which also, the trustees shall submit a detailed statement showing the assets and indebtedness of the corporation.

HISTORY.—R. S. § 3754; 58 v. 20, §§ 2, 3; S. & S. 108.

SECTION 9958. A majority in interest of the stockholders present at such meeting may determine what amount of the indebtedness of the corporation is to be paid by each stockholder, and fix the time and mode for the payment of the money assessed against each stockholder. But these provisions shall not interfere with or abridge the right of a creditor of the corporation to institute any proceedings authorized by law to enforce the liability of stockholders.

How amount  
of assessment  
fixed.

HISTORY.—R. S. § 3755; 58 v. 20, § 4; S. & S. 108.

SECTION 9959. The assessment shall be pro rata upon the stock subscribed or otherwise acquired by each stockholder, and in no case shall exceed the amount for which each stockholder is or may be liable by law. A stockholder who fails to pay the amount so assessed against him, shall be liable in a civil action to be brought in the name of the corporation, for the recovery thereof, as in other cases of indebtedness.

Limit of as-  
sessment and  
collection.

HISTORY.—R. S. § 3756; 58 v. 20, §§ 5, 6; S. & S. 108, 109.

SECTION 9960. The academic board of an institution incorporated for military and polytechnical education shall consist of the superintendent thereof, the commandant of cadets, and the professors. It may make and enforce rules and regulations for the government of cadets, but they first shall be submitted to and approved by the governor of the state.

Board of  
military  
academies.

HISTORY.—R. S. § 3757; 64 v. 239, §§ 1, 2; S. & S. 109.

SECTION 9961. The board of visitors of such an institution shall consist of the governor, who shall be ex-officio a member and the president of the board, of two other persons to be named by him, and such other persons as the superintendent of the institution appoints.

Board of  
visitors.

HISTORY.—R. S. § 3758; 64 v. 239, § 3; S. & S. 110.

SECTION 9962. The board of visitors shall meet at the institution, on the first day of the annual commencement exercises, and examine into the condition of the classes, quarters, and commons, the discipline, drill, records of standing in study, and conduct of the cadets, and report thereon to the legislature at its next session. The board of visitors, or any member thereof, may visit and inspect the institution at any time.

Duties of  
board of  
visitors.

HISTORY.—R. S. § 3759; 64 v. 239, § 4; S. & S. 110.

How term of  
trustees fixed.

SECTION 9963. At a regular meeting for the election or directors or trustees of a college or other institution of learning, the authorized voters may determine by vote, whether the election of directors or trustees shall be held annually, if the term of their election is for a longer period than one year, and also what proportion of the entire board shall be so elected. At the first election hereunder the voters shall designate upon their ballots who shall serve for one year, who for two years, and who for three years. Vacancies caused by expiration of term of office shall be filed by election annually thereafter.

HISTORY.—R. S. § 3760; 70 v. 125, § 1.

Certain corpo-  
rations may  
change loca-  
tion.

SECTION 9964. The trustees of colleges and other institutions of learning not endowed by voluntary contributions, established under special acts of incorporation, and which, by the provisions thereof are located at particular places, may change their location to such other places as they deem proper, and erect and maintain academies and other schools auxiliary thereto.

HISTORY.—R. S. § 3761; 70 v. 248, § 1.

Sale and  
distribution  
of property  
of certain  
corporations.

SECTION 9965. The trustees of a university, college, or other institution of learning, incorporated by authority of this state under special charter, owned in shares or stock subscribed or taken, may dispose of its property at public sale, on such terms as to payment as the stockholders by a vote of three-fourths of the shares or stock of the institution, direct, after giving public notice thereof, by publication, for six consecutive weeks in some newspaper published in the county where the institution is located. Such notice shall contain a full statement of the terms, time and place of sale, and such action of the trustees. The trustees may close up the corporate existence of such institution, and make an equitable division and distribution of the proceeds of the sale among all the holders of shares or stock, after the payment of its just debts.

HISTORY.—R. S. § 3762; 67 v. 24, § 1.

Certain col-  
leges may  
file charter  
and amend.

SECTION 9966. The trustees of any university, college or institution of learning, incorporated under authority of this state, owned in shares of stock subscribed and paid up in full, by a majority of the owners of such stock, for the sole purpose of promoting education, religion and morality, or the fine arts, exclusively among males or females, on the written petition of the owners of a majority of such stock filed before its trustees or on the vote of the owners of the majority of such shares of paid up stock at any general meeting of the stockholders called for such purpose, after thirty days' notice published in some newspaper published and of general circulation in the county, by them, may change the name and enlarge the purposes and objects of such university, college or institution, by amendments to its charter, approved by the owners of the majority of such



stock, so that all the educational rights and privileges thereof may be bestowed in the co-equal and co-ordinate education of both sexes.

HISTORY.—R. S. § 3762a; 85 v. 270.

An incorporated college or university may receive subscriptions to an endowment fund, and in consideration thereof may agree to furnish tuition either for limited periods or perpetually: *College v. Carey*, 35 O. S. 648.

SECTION 9967. When such amendment is adopted and the original articles of incorporation of such corporation have not been filed and recorded in the office of the secretary of state, a copy of the amendment and of the original articles, with a certificate to each of them thereto affixed, signed by the president and secretary of the corporation, and sealed with the corporate seal, if any there be, stating the fact and date of the adoption of such amendment, and that such copy thereof and of the original articles of incorporation are true copies of the originals shall be recorded in such office. When so recorded, such amendment shall be in law the sole articles of incorporation of the corporation. The property, real and personal, corporate franchises, and endowment funds, gifts, bequests, legacies, or mortgage securities, promissory notes, and rights of every kind belonging to, vested in, claimed, or possessed by the original corporation, by such amendment shall pass to, and be enjoyed and exercised by the corporation named, created and organized by such amendment for the promotion of all the objects and purposes of its creation and organization.

Copy of amendment to be filed with secretary of state.

HISTORY.—R. S. § 3762a; 85 v. 270.  
See G. C. § 9966.

SECTION 9968. For recording such amendments and copies of original articles of incorporation, and furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars.

Fee of secretary of state.

HISTORY.—R. S. § 3762a; 85 v. 270.

SECTION 9969. The board of trustees of a university, college, or institution of learning, incorporated under authority of this state, for the sole purpose of promoting education, religion and morality, or the fine arts, at a regular or special meeting of such board of trustees, called for that purpose, after thirty days' actual notice to each and all such trustees, may change the name and enlarge the purpose and objects of such university, college or institution of learning, by amendment to its charter, approved by a majority of the board at such regular or special meeting, so called and so notified, for such change of its name, and the enlargement of its purposes and objects.

Colleges may change name or purpose.

HISTORY.—R. S. § 3762b; 87 v. 8.

Procedure  
and effect.

SECTION 9970. When such amendment is so adopted by the board of trustees of such university, college or institution of learning, a copy thereof with a certificate thereto affixed, signed by the president and secretary of such board and sealed with the corporate seal, if any there be, stating the fact and date of such amendment, and that such copy is a true copy of the original amendment, shall be filed and recorded in the office of the secretary of state, and when so filed and recorded such amendment shall be in law an integral part of the articles of incorporation of such corporation. The property, real and personal, corporate powers and franchises, endowment funds, gifts, bequests, legacies, mortgage securities and promissory notes, belonging to, such original corporation, by such amendment shall pass to, and be enjoyed and exercised by the corporation created and organized by such amendment for the promotion of the objects of its creation and organization. Such new corporation shall be liable for and must perform all the lawful obligations and contracts of the original corporation.

HISTORY.—R. S. § 3762b; 87 v. 8.

Fees for secre-  
tary of state.

SECTION 9971. For recording such amendment and furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars.

HISTORY.—R. S. § 3762b; 87 v. 8.

Organic rules  
may be pre-  
scribed in  
articles of  
certain corpo-  
rations.

SECTION 9972. An association incorporated for the purpose of receiving gifts, devises or trust funds to erect, establish, or maintain an academy in any department of fine arts, a gallery for the exhibition of paintings, or sculpture or works of art, a museum of natural or other curiosities, or specimens of art or nature promotive of knowledge, or a law or other library, or courses of lectures upon science, art, philosophy, natural history, or law, and to open it to the public on reasonable terms; or an industrial training school, or a mechanics' institute for advancing the best interests of mechanics, manufacturers and artisans, by the more general diffusion of useful knowledge in those classes of the community, or homes for indigent and aged widows and unmarried women, whose directors or trustees may be of either sex, in its articles of incorporation may prescribe the tenure of office of the trustees or directors, the mode of appointing or electing successors, the administration and management of the property, trust and other funds of the corporation and such other organic rules as are deemed expedient or acceptable to donors, which shall be the permanent organic law of the corporation.

HISTORY.—R. S. § 3767; 84 v. 31; 83 v. 40; 75 v. 135, §§ 1, 3.

SECTION 9973. By certificate duly acknowledged by the trustees or directors, and filed in the office of the secretary of state, such corporations may add to the original objects and purposes thereof, any of the several objects and purposes, mentioned in the preceding section, not provided for by the articles of incorporation.

May add to original objects.

HISTORY.—R. S. § 3768; 83 v. 41; 75 v. 135, § 3.

SECTION 9974. Such corporation heretofore incorporated under the laws of the state, by certificate reciting the organic rules adopted by the corporation as its permanent organic law, duly acknowledged by the trustees or directors, and filed in the office of the secretary of state, may accept the provisions of the second preceding section.

Acceptance of statutory provisions.

HISTORY.—R. S. § 3768; 83 v. 41; 75 v. 135, § 3.

SECTION 9975. The officers of such a corporation charged or intrusted with the receipts and disbursements of its funds or property, shall make and keep accurate and detailed accounts of such funds, and the receipts and disbursements thereof such as are required to be kept by the fund commissioner of the state. On or before the third Monday in January of each year the trustees shall file with the clerk of the common pleas court of the county in which the corporation is located an abstract of their account which shall correspond in date, amount, person to whom paid, from whom received, and on what account, with the vouchers taken or given on account of such receipts and disbursements. At the same time they annually shall file in such clerk's office a report of the names of the donors, the kind, amount, or value of gifts of each, and a brief statement of the conditions and purposes of the gifts. The filing of such abstract and report, and the supplying of any omission in either, may be enforced by order and attachment of the common pleas court of the proper county, against the trustees, on motion of any respectable citizen.

Accounts of receipts and disbursements.

HISTORY.—R. S. § 3769; 75 v. 135, § 4.

SECTION 9976. No trustee of such corporation shall be eligible to any office or agency of the corporation to which a salary or emolument is attached, nor shall the trustees be allowed any salary, emoluments or perquisites, except the right of free ingress to the grounds, rooms, and buildings of the corporation.

Trustees ineligible to other office.

HISTORY.—R. S. § 3770; 75 v. 135, § 5.

SECTION 9977. On application to the attorney general by five citizens of the proper county, in writing, verified by the oath or affirmation of one of them, setting forth specific charges against any of the fiscal or other agents or trustees of such a corporation, involving a breach of trust or duty, he shall give notice thereof to the trustees or agents complained of, and inquire into the truth of such charges. For this purpose he may receive affidavits, or

Attorney-general may enforce duties of officers.



enforce, by process from the court of common pleas of Franklin county, the production of papers and the attendance of witnesses before him. If, on testimony or other evidence, he believes the charges or any of them to be true, he shall proceed, by action in that court, in the name of the state, against the delinquent trustee or trustees, fiscal agent or agents, and, on the hearing the court may direct the performance of any duty, or the removal of all or any of the agents or trustees, and decree such other and further relief as is equitable.

HISTORY.—R. S. § 3771; 75 v. 135, §6.

May increase number of trustees of certain corporations.

SECTION 9978. The board of trustees of a university or college heretofore incorporated, but not under the patronage of conferences or other ecclesiastical bodies of any religious denomination, may increase the number of such trustees to twenty-four, exclusive of the president, or a less number, and divide such trustees into six classes, each class to serve six years, and one class to be chosen each year, for such term. One trustee of each class may be chosen by the votes of the alumni of such university or college, if the board of trustees so provides by by-law, in which case the board also shall provide by such by-laws, a method of nominating and electing such appointee of the alumni.

HISTORY.—R. S. § 3771a; 87 v. 188; 86 v. 341.

Distribution of new members.

SECTION 9979. The president of such university or college shall ex-officio, be a trustee perpetually, and not be included in the classes going out in rotation. If in the first enlargement of the board of trustees, under the preceding section it be necessary to distribute new members to the several classes, whose terms will expire by rotation, the distribution may be made in such manner as the board directs so that no trustee shall be elected for a longer term than six years.

HISTORY.—R. S. § 3771a; 87 v. 188; 86 v. 341.

Stock corporations may retire stock.

SECTION 9980. The board of trustees of a university or college in this state organized as a stock corporation and not under ecclesiastical patronage, upon the surrender and cancellation of all outstanding shares of its capital stock, may cause a certificate of that fact, sealed with the corporate seal and signed by the president and secretary of such board, to be filed in the office of the secretary of state, which certificate the secretary of state shall record for public use in the records of his office, and a certified copy of which he shall return to such board of trustees upon receipt of a fee of twenty cents per one hundred words, to be in no case less than five dollars. Thereupon such university or college shall continue its corporate existence as a corporation not for profit and with the same powers, duties, privileges and immunities as it previously possessed, save such as relate to its capital stock. Such

board by resolution may conform the number, tenure and mode of election of its own members to the provisions of the preceding section, except, that trustees not authorized to be elected by alumni, shall be elected by the board; and that the ex-officio membership thereon of the president of such college or university shall be optional with the board.

HISTORY.—R. S. § 3771b; 99 v. 260.

SECTION 9981. When such a corporation seeking to avail itself of the provisions of the preceding section has procured the surrender for cancellation of not less than sixty per cent of the outstanding shares of its capital stock, any residue thereof standing upon its books in the names of persons, partnerships, societies or corporations that for seven years or more have been deceased, dissolved or of unknown address, and non-participants in the corporate elections, and of whose shares aforesaid no known owner exists, may be cancelled by decree of the court of common pleas of the county wherein such corporation is located, upon its petition, duly certified, being filed therein, making such persons, partnerships, societies and corporations or their legal representatives parties defendant, and on serving such defendants with public notice of the pendency of such petition in the manner provided for service by publication in civil actions, and upon averment and proof by the plaintiff and a finding by the court of the facts as hereinbefore required, and of the further fact that the plaintiff is an eleemosynary corporation. Thereupon the shares of such defendants shall be deemed to be cancelled and surrendered, and the decree shall not be vacated or set aside, on the application of any such defendant, otherwise than as in the case of judgments in civil actions.

Cancellation  
by decree of  
court.

HISTORY.—R. S. § 3771c; 99 v. 260.

SECTION 9982. A mechanics' institute, incorporated under the laws of this state prior to the year eighteen hundred and fifty-one, may borrow money, issue bonds or notes therefor at no more than the legal rate of interest, and secure them by mortgage upon its real estate.

Mechanics'  
institute may  
borrow money.

HISTORY.—R. S. § 3768-1; 82 v. 118, § 1.

SECTION 9983. The directors and trustees of such corporations shall not be personally liable for debts contracted by them, as in the preceding section provided.

Liability of  
directors and  
trustees.

HISTORY.—R. S. § 3768-2; 82 v. 118, § 2.

SECTION 9984. Superintendents of city hospitals, directors or superintendents of city or county infirmaries, directors or superintendents of work-houses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense, the directors or warden of the penitentiary, township trustees, sheriffs, or coroners, in possession of bodies not claimed or identified, or which must be buried

How medical  
colleges may  
receive bodies  
for dissection.

at the expense of the county or township, before burial, shall hold such bodies not less than thirty-six hours and notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the president of a county medical society, of the fact that such bodies are being so held. Before or after burial such superintendent, director, or other officer, on the written application of the professor of anatomy, or the president of a county medical society shall deliver to such professor or president, for the purpose of medical or surgical study or dissection, the body of a person who died in either of such institutions, from any disease, not infectious, if it has not been requested for interment by any person at his own expense.

HISTORY.—R. S. § 3763; 93 v. 84; 78 v. 33; 67 v. 25, § 1.  
See G. C. § 9985.

Body to be delivered to claimant.

SECTION 9985. If the body of a deceased person so delivered, be subsequently claimed, in writing, by a relative or other person for private interment, at his own expense, it shall be given up to such claimant.

HISTORY.—R. S. § 3763; 93 v. 84; 78 v. 33; 67 v. 25, § 1.

The next of kin of a decedent have the right to determine the place and manner of burial: *Smiley v. Bartlett*, 6 O. C. C. 234, 3 O. C. D. 432.

Interment of body after dissection.

SECTION 9986. After such bodies have been subjected to medical or surgical examination or dissection, the remains thereof shall be interred in some suitable place at the expense of the party or parties in whose keeping the corpse was placed.

HISTORY.—R. S. § 3763; 93 v. 84; 78 v. 33; 67 v. 25, § 1.

Notification of relatives.

SECTION 9987. In all cases the officer having such body under his control, must notify or cause to be notified, in writing, the relatives or friends of the deceased person.

HISTORY.—R. S. § 3763; 93 v. 84; 78 v. 33; 67 v. 25, § 1.  
See G. C. § 9985.

Body of strangers or travelers.

SECTION 9988. The bodies of strangers or travelers, who die in any of the institutions above named, shall not be delivered for the purpose of dissection unless the stranger or traveler belongs to that class commonly known as tramps. Bodies delivered as herein provided shall be used for medical, surgical and anatomical study only, and within this state.

HISTORY.—R. S. § 3763; 93 v. 84; 78 v. 33; 67 v. 25, § 1.

Liability for having unlawful possession of body.

SECTION 9989. A person, association, or company, having unlawful possession of the body of a deceased person shall be jointly and severally liable with any other persons, associations, and companies that had or have had unlawful possession of such corpse, in any sum not less than five hundred nor more than five thousand dollars, to be recovered at the suit of the personal representative of



the deceased in any court of competent jurisdiction, for the benefit of the next of kin of deceased.

HISTORY.—R. S. § 3764; Revised Statutes of 1880.

This section does not apply to cemetery associations, nor to the trustees thereof; and it does not apply to the remains of persons which have been buried for a long time, and which are subsequently removed or disturbed by reason of a change in the purpose to which land is put (see G. C. §§ 12689 to 12692): *Carter v. Zanesville*, 59 O. S. 170.

## CHAPTER 31

### CRIMES AND OFFENSES AGAINST SCHOOLS

#### SECTION.

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- 12873. Embezzlement of school and other public moneys.
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SECTION.

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12999. Refusal of employer to permit minor employe to attend part time school; penalty.
13000. Failure to produce age and schooling certificate prima facie evidence of illegal employment.
- 13007-1. Attendants, officers, etc., may require proof minor is over eighteen years of age, when, unlawful refusal.

SECTION.

- 13007-7. Duty of attendants, officers, etc., and other officers to file affidavit for violation of law.
- 13007-8. Penalty for making false statement as to age of minor to secure employment of said minor.
- 13007 9. Penalties for violation of law.
- 13007-10. Penalty for illegal employment of minor after notice.
- 13007-14. When minor or female under 21 years of age refuses to divulge age may be conducted before juvenile court.
13030. Sexual intercourse with female pupils.

SECTION 11C67. When a railroad company, incorporated in this state, has located its railroad through a part of reserved section twenty-nine or sixteen, or through a part of sections granted by congress instead of section sixteen for school purposes, and such lands remain unsold, or through a town lot or parcels of ground used for or devoted to school purposes, it may appropriate so much of such land or lots as is necessary for its purposes. Service of the summons made on such trustees or school officers, as have possession or control of the lands, shall have the same force and effect as service in other cases on owners of land sought to be appropriated. The money arising from such appropriation must be disposed of by such trustees or school officers in accordance with law.

How school land appropriated.

HISTORY.—R. S. § 6439; 69 v. 88, § 14; S. & C. 316.

SECTION 11C84. When a corporation, authorized by law to make appropriation of private property or lands reserved for school purposes, has taken possession of and is occupying or using the land of any person, or such school lands for any purpose, and the land so occupied or used has not been appropriated and paid for by the corporation, or is not held by an agreement in writing with the owner thereof, or the trustees or school officers having possession or control of such school lands, such owner or owners, or either of them, or such trustees or school officers, may serve written notice upon the corporation in the manner provided for the service of summons against a corporation, to proceed under this chapter to appropriate the lands. On the failure of such corporation for ten days so to proceed, the owner or owners or such trustees or school officers may file a petition in the probate court of the proper county setting forth the fact of such use or occupation by the corporation, that the corporation has no right, legal or equitable, thereto, and in cases of reserved sections sixteen and twenty-nine, or any part of sections granted by congress instead of section sixteen for school purposes, no right, legal or equitable derived from the trustees and officers named therein, that such notice has been duly served, that the time of limitation under the notice has elapsed, and such other facts, including a pertinent description of the land so used or occupied, as are proper to a full understanding of the case.

Petition in error.

HISTORY.—R. S. § 6448; 80 v. 114; 69 v. 88, § 21; S. & S. 114.



Corporation  
may pay  
judgment and  
enter on  
property.

SECTION 11085. Such owner or owners, or such trustees or school officers, intending to institute such proceeding, may demand in writing, from the president or chief officer of such corporation a specific description of each parcel of land so used or occupied without appropriation by it, of the work, if any, constructed or intended to be constructed thereon, and the use to which it is to be applied. Upon failure of the corporation for ten days to furnish this as fully as would be required of it in a proceeding to appropriate lands, the fact of such demand and failure may be alleged in the petition in such proceeding. On notice to the corporation and proof thereof to the probate judge having jurisdiction of such appropriation, he shall restrain it from the use and occupation of the land until such demand is complied with. Or, such owner or owners, or trustees or school officers may cause the necessary surveys to be made therefor, and the costs thereof must be taxed to the corporation in such proceeding.

HISTORY.—R. S. § 6448; 80 v. 114; 69 v. 88, § 21; S. & § 114.

Hazing.

SECTION 12417. Whoever, being a student or person in attendance at a public, private, parochial, or military school, college or other educational institution conspires to, or engages in hazing or committing an act that injures, frightens, degrades, disgraces, or tends to injure, frighten, degrade or disgrace a fellow student or person attending such institution, shall be fined not more than two hundred dollars or imprisoned in the county jail not more than six months or both, and, in case of fine, the sentence shall be that the defendant be imprisoned until such fine is paid.

HISTORY.—R. S. § 6819-1; 90 v. 353; 98 v. 124, § 1.

Permitting act  
of hazing, etc.

SECTION 12418. Whoever, being a teacher, superintendent, commandant or other person in charge of a public, private, parochial or military school, college or other educational institution knowingly permits an act of hazing or of attempting to haze, injure, frighten, degrade or disgrace a person attending such institution shall be fined not more than one hundred dollars.

HISTORY.—R. S. § 6819-1a; 98 v. 124, § 1a.

Mayhem.

SECTION 12419. Whoever in hazing or attempting to haze a person, tattoos or permanently disfigures his body, limbs or features, by the use of nitrate of silver or like substance, shall be imprisoned in the penitentiary not less than three years nor more than thirty years.

HISTORY.—R. S. § 6819-2; 90 v. 353, § 2.

Arson.

SECTION 12433. Whoever maliciously burns or attempts to burn a dwelling house, kitchen, smoke house, shop, office, barn, stable, storehouse, warehouse, railroad coach or car, malt house, still house, mill, pottery or other building, the property of another person, or a church, meeting house, court house, workhouse, schoolhouse, jail or the

Ohio penitentiary, or a shop, storehouse or building, within the enclosed walls thereof, or other public building, or a ship or other water craft, or a toll bridge or a part thereof, erected across a river, wholly or partly within this state, or other bridge erected across any of the waters within this state, or sets fire to or attempts to set fire to anything in or near to such building, coach or car, watercraft or bridge, with intent to burn it, if the value of such building, coach or car, watercraft or bridge, burned, attempted or intended to be burned, is fifty dollars or more, shall be imprisoned in the penitentiary not more than twenty years, or if the value is less than that sum, be fined not more than two hundred dollars or imprisoned not more than thirty days, or both.

HISTORY.—R. S. § 6881; 86 v. 3; 83 v. 81; 33 v. 33, §§ 12, 13; 60 v. 85, §§ 1, 2; 66 v. 122, § 1; S. & C. 406; S. & S. 267, 268.

SECTION 12438. Whoever in the night season maliciously and forcibly breaks and enters, or attempts to break and enter an uninhabited dwelling house, or a kitchen, smokehouse, shop, office, storehouse, warehouse, malthouse, stillhouse, mill, pottery, factory, water craft, schoolhouse, church or meeting house, barn or stable, railroad car, car factory, station house, hall or other building, or attempts to break and enter an inhabited dwelling house with intent to steal property of any value, or with intent to commit a felony, shall be imprisoned in the penitentiary not less than one year nor more than fifteen years.

Burglary in an uninhabited dwelling or other building.

HISTORY.—R. S. § 6885; 60 v. 10, § 14; 82 v. 161; 95 v. 561; 96 v. 14; 98 v. 3; 100 v. 5.

SECTION 12441. Whoever, by day or night maliciously enters a dwelling house, kitchen, shop, storehouse, malt-house, stillhouse, mill, office, treasury, bank, railroad car, pottery, water craft, schoolhouse, church or meeting house, smokehouse, barn or stable and attempts to commit a felony, shall be imprisoned in the penitentiary not less than one year nor more than two years.

Entering a house by night or day and attempting to commit felony.

HISTORY.—R. S. § 6886; 78 v. 28; 83 v. 33, § 16; S. & C. 426; S. & C. 407.

SECTION 12442. Whoever, in the day time, maliciously breaks and enters a dwelling house, kitchen, shop, store, warehouse, malt house, stillhouse, mill, pottery, water craft, schoolhouse, church or meeting house, smokehouse, barn, stable, railroad car, car factory, depot, station house, poultry house, wagon house, sugar house, boat house, grain house, greenhouse, or other building with intent to steal, or to commit a felony shall be imprisoned in the penitentiary not less than one year and not more than five years.

Breaking and entering in day time; penalty.

HISTORY.—R. S. § 6887; 88 v. 342; 52 v. 28, § 1; S. & C. 485; 109 v. 58.

SECTION 12487. Whoever maliciously injures or defaces a church edifice, schoolhouse, dwelling house or other building, its fixtures, books or appurtenances, or commits

Injuring and committing nuisances in buildings.

a nuisance therein, or purposely and maliciously commits a trespass upon the inclosed grounds attached thereto or fixtures placed thereon, or an inclosure or sidewalk about such grounds, shall be fined not more than one hundred dollars.

HISTORY.—R. S. § 6877; 63 v. 175, § 1; 70 v. 216, § 73; S. & C. 457b; S. & S. 280.

Using hall,  
theater, etc.,  
without certi-  
ficate, or ob-  
structing aisles.

SECTION 12574. Whoever, being the owner of a hall, theater, opera house, church or schoolhouse, or having control thereof individually or as agent of a society or corporation, permits it to be used by public assemblies or schools without having the certificate required by law that it is provided with the means of speedy and safe ingress and egress, or blocks up the aisles and hallways thereof by placing chairs or stools therein, or permits them to be occupied by persons standing therein or by any obstruction endangering the safety of persons therein, or cuts off easy escape and egress therefrom, shall be fined not more than one thousand dollars.

HISTORY.—R. S. § 7010; 80 v. 28; 62 v. 139, § 4; S. & S. 636.

Embezzlement  
of public  
money; de-  
posit with  
bank.

SECTION 12873. Whoever, being charged with the collection, receipt, safekeeping, transfer or disbursement of public money or a bequest, or part thereof, belonging to the state, or to a county, township, municipal corporation, board of education, cemetery association or company, converts to his own use, or to the use of any other person, body corporate, association or party, or uses by way of investment in any kind of security, stock, loan, property, land or merchandise, or in any other manner or form, or loans with or without interest to a company, corporation, association or individual, or, except as provided by law, deposits with a company, corporation or individual, public money or other funds, property, bonds, securities, assets or effects received, controlled or held by him for safekeeping or in trust for a specific purpose, transfer or disbursement, or in any other way or manner, or for any other purpose, shall be guilty of embezzlement of the money or other property thus converted, used, invested, loaned, deposited or paid out, and shall be imprisoned in the penitentiary not less than one year nor more than twenty-one years and fined double the amount of money or other property embezzled.

HISTORY.—R. S. § 6841; 91 v. 338; 80 v. 43; 55 v. 44, § 15; S. & C. 1610.

Where a board of education of a township permits its treasurer, by agreement, to use its funds in his business, and renew this loan after his term has expired, the treasurer is guilty of embezzlement, and the board of advising and aiding in the embezzlement, and in an action against the sureties on the note given for such loan, the illegality of the transaction may be set up: Board of Education v. Thompson, 33 O. S. 321.

The clerk of the board of education is not authorized, nor is it made his duty by statute, to become the custodian of tuition funds belonging to such board, and where, pursuant to a rule of the said



board, the clerk received such funds into his custody and failed to keep them safely, the sureties on his bond are not liable therefor: State, ex rel., v. Griffith, 74 O. S. 80.

A loan by a board of education to its treasurer is within this section: Board of Education v. Thompson, 33 O. S. 321.

Although interest received on deposit of public funds may be recovered from a treasurer of a school district in a civil action, it does not follow that it was public money within the meaning of this section and that taking it is embezzlement: State v. Pierson, 83 O. S. 241.

SECTION 12874. The fine, provided for in the next preceding section, shall operate as a judgment at law on all of the estate of the person sentenced and be enforced to collection by execution or other process for the use only of the owner of the property or effects so embezzled, and such fine shall only be released or entered as satisfied by the person in interest as aforesaid.

Fine is a judgment against whole estate.

HISTORY.—R. S. § 6841; 91 v. 338; 80 v. 43; 55 v. 44, § 15; S. & C. 1610.

SECTION 12875. The provisions of section twelve thousand, eight hundred and seventy-three shall not make it unlawful for the treasurer of a township, municipal corporation, board of education, or cemetery association, to deposit public money with a person, firm, company, or corporation organized to do a banking business under the laws of this state or the United States, but the deposit of such funds in such bank shall not release such treasurer from liability for loss which may occur thereby. Nor shall the provisions of section twelve thousand, eight hundred and seventy-three, make it unlawful for a county auditor, county treasurer, probate judge, sheriff, clerk of courts, or recorder, to deposit fees and trust funds coming into their custody as such officers as above, until such time as said aforesaid officers are required to make payment of the official earnings of their offices, so deposited, into their respective fee funds as required by section twenty-nine hundred and eighty-three, and until such time as the trust funds, so held by them in their official capacities, may be paid to the person, persons, firms, or corporations, entitled to same, and any interest earned and paid upon said deposits shall be apportioned to, and become a part of said fees or trust funds, and shall in no instance accrue to, and be received by, the official making said deposits, for his own use.

Lawful deposit of certain fees and trust funds.

HISTORY.—S. & C. 1610; R. S. § 6841; 55 v. 44, § 15; 80 v. 43; 91 v. 338; 106 v. 550.

The treasurer of a school district who, under favor of this section, deposits its funds in a bank which allows interest on the average balance of the deposit, is required to account to the school district for such interest: Eshelby v. Board of Education, 65 O. S. 71.

SECTION 12878. Whoever, being a member of the council of a municipal corporation, or an officer, agent, clerk or servant of such corporation, or board or depart-

Embezzlement by municipal and school officers.

ment thereof, or an officer, clerk or servant of a board of education, knowingly diverts, appropriates or applies funds, or a part of a fund raised by taxation or otherwise, to any use or purpose other than that for which it was raised or appropriated, or knowingly diverts, appropriates or applies money borrowed, or a bond of the corporation or part of the proceeds of such bond, to any use or purpose other than that for which such loan was made, or bond issued, shall be imprisoned in the penitentiary not less than one year nor more than twenty-one years and fined in double the amount of money or property embezzled.

HISTORY.—R. S. § 6846; 66 v. 263, § 671; 73 v. 116, § 675.

Fine is judgment on whole estate.

SECTION 12879. The fine provided for in the next preceding section, shall be a judgment at law on all of the estate of the person sentenced and be enforced to collection by execution or other process for the use only of the owner of the property or effects so embezzled, and such fine shall only be released or entered as satisfied by the person in interest as aforesaid.

HISTORY.—R. S. § 6846; 66 v. 263, § 671; 73 v. 116, § 675.

Member of board of education accepting compensation.

SECTION 12883. Whoever, being a member of a board of education, accepts or receives for his services as such member any compensation except as clerk or treasurer of such board or as otherwise provided by law, shall be imprisoned in the penitentiary not less than one year nor more than twenty-one years and fined double the amount of money or other property so accepted or received.

HISTORY.—R. S. § 6975; 70 v. 214, § 67.

Neglect to instruct pupils in fire drills; penalty.

SECTION 12900. Whoever, being a principal or person in charge of a public or private school or educational institution having an average daily attendance of fifty or more pupils, or the person in charge of any children's home or orphanage housing twenty or more minor persons, wilfully neglects to instruct and train such children by means of drills or rapid dismissals at least once a month while such school, institution or children's home is in operation, so that such children in a sudden emergency may leave the building in the shortest possible time without confusion, or, in the case of schools, wilfully neglects to keep the doors and exits of such building unlocked during school hours, shall be fined not less than five dollars nor more than twenty dollars for each offense. The state fire marshal have authority to order the immediate installation of necessary fire gongs or signals in such schools, institutions or children's homes and enforce the further provisions of this section.

HISTORY.—99 v. 231, §§ 1, 2; 109 v. 253.

Course of study in fire prevention provided.

SECTION 12901. The state fire marshal and the superintendent of public instruction are hereby empowered and directed jointly to provide a course of study in fire pre-

vention for use in the public, private or parochial schools of the state, dealing with the protection of lives and property against loss or damage as a result of preventable fire. It shall be the duty of each board of education or the board or persons in control of such schools to compel the use of such course of study in each school under their control. Whoever, being a teacher or instructor in a public, private or parochial school, wilfully neglects to devote at least fifteen minutes in each week during which such school is in session to instructing the pupils thereof as to the dangers of fire, shall be guilty of a misdemeanor and fined not less than five dollars nor more than twenty dollars.

Neglect to  
give instruction;  
penalty.

HISTORY.—99 v. 231, § 1, 2; 100 v. 253.

SECTION 12902. On and after September first, one thousand nine hundred and twenty-one, it shall be the duty of each teacher in the public, private or parochial schools in the state to use such course of study in fire prevention in the classes under his control. There shall be placed in the hands of each teacher above mentioned, prior to September first, one thousand nine hundred and twenty-one, by the superintendent of public instruction, through the county superintendent of schools, a book for the purpose of the instruction of pupils provided in the next two preceding sections. Such book shall be conveniently arranged in a sufficient number of chapters or lessons to provide a different one thereof for each week of the maximum school year.

Duty of  
teacher, etc.;  
book of in-  
structions.

HISTORY.—99 v. 231, § 1; 109 v. 254.

SECTION 12903. Such books shall be published at the expense of the state under the direction of the superintendent of public instruction and the cost thereof shall be paid from the special fund arising from the tax on insurance premiums paid by insurance companies for the support of the department of state fire marshal and the furtherance of fire prevention. In the year one thousand nine hundred and twenty-one, and prior to September first thereof, in order to supply the teachers of the state with the necessary textbooks, the superintendent of public instruction shall have prepared, published and distributed, in the manner provided above, not less than fifty thousand copies of such book bound in durable covers, and such additional number for future needs of the schools, as may be secured by the appropriation made herein. For the purpose of providing for the cost of the preparation, publishing and distribution of the course of study and texts herein provided for, there is hereby appropriated out of any moneys in the state treasury to the credit of the special fund created by operation of section 841 of the General Code, and not otherwise appropriated, the sum of fifteen thousand dollars to be available on and after the date this act goes into effect.

Preparation,  
publication  
and distribu-  
tion of books  
of instruction;  
expense, how  
paid.

HISTORY.—99 v. 231, § 1; 104 v. 225 (226); 109 v. 254.



Laws not applicable to colleges and universities.

SECTION 12904. The provisions of sections 12900, 12901 and 12902, General Code, shall not apply to colleges and universities.

HISTORY.—99 v. 232, § 4; 109 v. 254.

Boards of education shall print laws for use of teachers.

SECTION 12905. Boards of education having control of the schools of a rural, village or city school district shall cause a copy of sections 12900 and 12901, General Code, to be printed in the manual or handbook prepared for the guidance of teachers, where such manual is in use.

HISTORY.—99 v. 232, § 3; 109 v. 255.

Pupil joining fraternity; penalty.

SECTION 12906. Whoever, being a pupil in the public schools, organizes, joins or belongs to a fraternity, sorority or other like society composed of or made up of pupils of the public schools, shall be fined not less than ten dollars nor more than twenty-five dollars for each offense.

HISTORY.—99 v. 253, §§ 1, 3.

Failure to comply with law a misdemeanor; penalty.

SECTION 12906-1. Whoever, having control of any school house or other educational institution either as an individual or in connection with any person or persons, neglects or refuses to carry out the provisions of section 7621 of the General Code, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five dollars, nor more than twenty-five dollars, and for each subsequent offense shall be fined not less than twenty-five dollars, nor more than one hundred dollars. Each day of such refusal or neglect shall be held to constitute a separate offense.

HISTORY.—108 v. Pt. I 133 (134).

Teacher, principal or superintendent failing to give notice of fraternity in schools.

SECTION 12907. Whoever, being a teacher, principal or superintendent, having knowledge or reason to believe that a fraternity, sorority or like society composed or made up of pupils of the public schools, is being organized or maintained in the public schools or that a pupil attending such school is organizing, or is a member of, such fraternity, sorority or like society, fails forthwith to advise the president or secretary of the board of education in charge of such schools thereof, shall be fined not less than ten dollars nor more than twenty-five dollars for each offense.

HISTORY.—99 v. 253, §§ 2, 3.

Board of education to investigate charges of existence of fraternity; notice to members thereof.

SECTION 12908. Whoever, being a board of education in charge of public schools, upon being advised in accordance with the provisions of the next preceding section, within thirty days thereafter, fails to investigate such charges after not less than ten days' written notice to such pupils, their parents or guardians, or, being the secretary of such board of education, when such board has found the charges mentioned in the next preceding section to be correct and true, fails forthwith to notify in writing the

pupils organizing, joining or belonging to such fraternity, sorority or like society, to disband and discontinue it and to withdraw therefrom within five days from the receipt of such notice, shall be fined not less than ten dollars nor more than twenty-five dollars for each offense.

HISTORY.—99 v. 253, §§ 2, 3.

SECTION 12909. Whoever, being a pupil in the public schools, organizing, joining or belonging to a fraternity, sorority or like society composed or made up of pupils of the public schools, fails to obey the notice provided for in the next preceding section, shall be forthwith suspended from the public schools by the superintendent or principal in charge thereof, until such pupil shall comply with the order of such board of education.

Suspension of pupil who fails to obey notice.

HISTORY.—99 v. 253, § 2; 104 v. 225 (236).

SECTION 12910. Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.

Officer, or agent interested in contracts.

HISTORY.—R. S. § 6969; 94 v. 391; 73 v. 86, § 21; 73 v. 31, § 22; 73 v. 43, § 31.

SECTION 12911. Whoever, holding an office of trust or profit, by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is not connected, and the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law, shall be imprisoned in the penitentiary not less than one year nor more than ten years.

Same as to other contracts.

HISTORY.—R. S. § 6969; 94 v. 391; 73 v. 86, § 21; 73 v. 31, § 22; 73 v. 43, § 31.

SECTION 12929. Whoever being an officer or appointee responsible for securing or reporting the annual enumeration of children makes a false return shall upon conviction be fined not less than twenty nor more than one thousand dollars or imprisoned not less than ten days nor more than thirty days.

False enumeration of school children.

HISTORY.—R. S. § 4041; 70 v. 195, § 75; 109 v. 396.

SECTION 12931. Whoever offers or gives a reward or consideration, or makes a present or reduction in price to a person employed in a public school, or to an officer having authority or control over it, for favoring, recommending or advocating the introduction, adoption or use in such

Offering bribe for recommending textbooks.

school, of a textbook, map, chart, globe or other school supply, or to induce him so to do, or, being an employe or officer of such school accepts, offers or agrees to receive or accept a reward, consideration, present, gift or reduction in price for so doing, shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY.—R. S. § 6975a; 86 v. 207.

Employing  
relative as  
teacher.

SECTION 12932. Whoever, being a local director or member of a board of education, votes for or participates in the making of a contract with a person as a teacher or instructor in a public school to whom he or she is related as father or brother, mother or sister, or acts in a matter in which he or she is pecuniarily interested, shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY.—R. S. § 6975a; 86 v. 207.

A member of a board of education cannot be employed by such local board as a teacher and any such contract made by the board would be null and void.

Membership in a board of education is not lost to such member by his participation in the employment of himself as a teacher and such contract for teaching services is null and void, for a member of a board of education cannot participate in any contract in which he is pecuniarily interested or be employed in any manner for compensation by a board of education; cannot participate in any contract in which he is pecuniarily interested or be employed in any manner for compensation by the board of which he is a member, except as clerk or treasurer.

A president of a board of education who is under contract with such board as a teacher, can cast a vote for district superintendent, but his contract as a teacher is null and void. Op. Atty. Gen. (1919), p. 761.

The act of a husband member of a board of education in voting to employ his wife as a teacher may not be a violation of section 12932 G. C. under every state of facts.

Whether such husband board member votes to employ his wife as a teacher or sits mute while such contract is entered into is in violation of section 4757 G. C. and said contract is null and void.

The wife, having rendered services and received payment for the same under such a contract, in the absence of fraud, equity may leave the parties thereto where they are found. Op. Atty. Gen. (1920), p. 1122.

Where a wife of a member of a board of education appears as a party to a contract with such board of education, such contract is in violation of section 4757 G. C. and is null and void. Op. Atty. Gen. (1920), p. 1143.

The word "brother" as used in section 12932, G. C., does not include the relation of brother-in-law. Op. Atty. Gen. (1915), p. 1680.

Divulging  
school exam-  
iners' ques-  
tions.

SECTION 12939. Whoever, being a person connected with the preparation, printing, distribution or handling of questions for county teachers' examinations, makes public in any manner or gives information in regard to the nature or character of such questions, to an applicant for a certificate, or other person, prior to such examination in each branch of study respectively, or whoever is found in



possession of any of such questions prior to the distribution thereof for the use of applicants at such examination, shall be fined not less than fifty dollars nor more than one hundred dollars, and imprisoned not less than thirty days nor more than ninety days.

HISTORY.—R. S. § 4071a; 90 v. 300; 97 v. 371; 98 v. 228.

SECTION 12974. Whoever being a parent, guardian or other person having care of a child of compulsory school age violates any of the provisions of sections 7762, 7762-5, 7763, 7765-1, 7773 or 7773-1, General Code, shall upon conviction be fined not less than five dollars and not more than twenty dollars, or the court may in its discretion require the person so convicted to give bond in the sum of one hundred dollars with sureties to the approval of the court, conditioned that he will cause the child under his charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law; and upon the failure or refusal of any such parent, guardian or other person to pay said fine and costs or furnish said bond according to the order of the court, then said parents, guardian or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days.

Failure to send child to school; penalty.

HISTORY.—R. S. § 4022-1; 86 v. 333, § 1; 87 v. 143; 87 v. 316; 89 v. 889; 90 v. 285; 95 v. 615, § 4022-1; 109 v. 396.

This section now contains some of the subject matter formerly in sections 12977, 12978 and 12980 of the General Code.

The intent of this section is to secure the trial of parents, charged with having failed to cause their children to attend school, within the district where the offense occurs and the court may insert proper punctuation to give that effect to the section: *Grahn v. State*, 9 O. D. (N. P.) 816.

A parent who sends his child to a public school and is willing to continue to do so, but the child is excluded for failure to comply with a rule of the board of education requiring vaccination, is not liable to conviction under the compulsory education act: *State v. Turney*, 12 O. C. C. (N. S.) 33, 21 O. C. D. 222.

(The child may however be placed under other guardianship if its education is not provided for by the parent.)

SECTION 12975. Nothing in the preceding section shall be construed as relieving from prosecution and conviction any such parent, guardian or other person upon further violation of the statutes named therein; nor shall forfeiture of the bond named therein, if required, be construed as relieving such person from prosecution and conviction upon further violation of the statutes named therein.

Violation of other statutes.

HISTORY.—R. S. § 4022-2; 86 v. 334, § 2; 90 v. 285; 95 v. 616, § 4022-2; 97 v. 365; 101 v. 310; 109 v. 396.

Section new. Subject matter formerly in this section, now found in section 12976.

SECTION 12976. Whoever employs a minor under eighteen years of age before exacting from such minor the age and schooling certificate, or age and pre-employment card required by law, or fails to keep such certificate or card on file, or fails to return to the superintendent of

Employing minors during school session; requirements.

schools or his authorized representative such certificate or card or give notice of the non-use thereof within two days from such minor's withdrawal or dismissal from his service, or continues to employ a minor under eighteen years of age after his age and schooling certificate or card is void, or refuses to permit an attendance officer or other person mentioned in section 7765, General Code, to examine such certificate or card, or refuses to permit such attendance officer or person to observe the conditions under which minors under eighteen years of age are employed, or refuses to permit under reasonable regulations such attendance officer or persons to make inquiry of minors or persons supposed by such officer or persons to be under eighteen years of age in regard to matters pertaining to their age, employment or schooling, shall upon conviction be fined not less than twenty dollars, nor more than fifty dollars.

HISTORY.—R. S. § 4022-3; 86 v. 334, §§ 3, 4; 87 v. 143; 90 v. 286, § 3; 95 v. 617, § 4022-3; 109 v. 397.

This section now contains some of the subject matter formerly found in section 12975.

Violations by officer or agent of corporation.

SECTION 12977. Whoever, being an officer or agent of a corporation, participates or acquiesces in any violation of law relating to compulsory education or employment of minors shall upon conviction be fined not less than twenty dollars, nor more than fifty dollars.

HISTORY.—R. S. §§ 4022-7, 4022-8; 86 v. 336, §§ 8, 9; 90 v. 287, § 7; 95 v. 618, § 4022-7; 86 v. 337, § 8; 87 v. 144; 87 v. 325; 90 v. 288; 95 v. 619, § 4022-8; 101 v. 310; 109 v. 397.

Subject matter formerly in this section now found in section 12974. This section now contains the subject matter formerly in section 12982.

Failure to produce certificate prima facie evidence of illegal employment.

SECTION 12978. Failure to produce for lawful inspection the age and schooling certificate or card as provided by law or the record as provided in section 12998, General Code, shall be prima facie evidence of the illegal employment or service of the child whose certificate or card is not so produced or whose record is not so correctly kept.

HISTORY.—R. S. § 4022-7; 86 v. 336, §§ 8, 9; 90 v. 287, § 7; 95 v. 618, § 4022-7; 109 v. 397.

Subject matter formerly in this section now found in section 12974. This section now contains practically the same subject matter as found in section 13000.

Neglect or failure to issue certificate; penalty.

SECTION 12979. Any person charged by law with issuance of age and schooling certificates who fails or refuses upon request to issue such certificate or age and pre-employment card or overage certificate in conformity to law, or who issues such certificate or age and pre-employment card or overage certificate contrary to any of the provisions of the laws relating to the issuance of such certificates or cards, shall upon conviction be fined not less than twenty nor more than fifty dollars.

HISTORY.—R. S. § 4022-7; 86 v. 336, §§ 8, 9; 90 v. 287, § 7; 95 v. 618, § 4022-7; 109 v. 397.

The subject matter in this section was formerly in section 7766-1.

SECTION 12980. Whoever, being an officer of a board of education or a superintendent, principal or teacher of a public, private or parochial school or a juvenile examiner refuses or neglects to perform a duty imposed upon him by the laws relating to compulsory education and the issuance of age and schooling certificates or declines to give the information necessary for the execution of these laws shall upon conviction be fined not less than twenty nor more than fifty dollars. Continued refusals to perform the duties or give the information shall constitute additional violations of the statutes relating to compulsory education and the issuance of age and schooling certificates.

School officer neglecting or refusing to perform duty; penalty.

HISTORY.—R. S. § 4022-7; 86 v. 336, §§ 8, 9; 90 v. 287, § 7; 95 v. 618, § 4022-; 19 v. 397.

The subject matter formerly in this section now found in section 12974. This section now contains the subject matter formerly in section 12981.

SECTION 12981. Mayors, justices of the peace, police judges and judges of juvenile courts shall have final jurisdiction to try the offenses described in the seven next preceding sections. When complaint is made against a corporation for violating any provision of such sections, summons shall be served, appearance made, or plea entered as provided by law in cases when an indictment is presented against a corporation, except in complaints before magistrates, when service may be made by the constable. In other cases process shall be served and proceedings had as in cases of misdemeanor.

Courts having jurisdiction.

HISTORY.—R. S. § 4022-11; 86 v. 338, §§ 11, 12, 13; 87 v. 145; 87 v. 326; 90 v. 290, § 11; 95 v. 621, § 4022-11; 109 v. 398.

The subject matter formerly in this section now found in section 12980. This section now contains the subject matter formerly in section 12984.

See Opinions of Attorney General (1914), p. 1536, cited under Sec. 7777.

SECTION 12982. Fines collected under the provisions of the eight sections next preceding shall be paid into the funds of the city, exempted village, village or rural school district in which the offense was committed.

Disposition of fines.

HISTORY.—R. S. § 4022-11; 86 v. 338, §§ 11, 12, 13; 87 v. 145; 87 v. 326; 90 v. 290, § 11; 95 v. 621, § 4022-11; 109 v. 398.

The subject matter formerly in this section now found in section 12977. This section now contains the subject matter formerly in section 12985.

SECTION 12982-1. The attendance officer or any inspector of the industrial commission of Ohio shall when a violation of section 12976, 12977, 12978, 12979 or 12980, General Code, comes to his attention make complaint against the person or employer violating it in any court having jurisdiction.

Who shall file complaint.

HISTORY.—109 v. 398.

SECTION 12983. Any parent, guardian or other person in charge of a child of compulsory school age as defined in section 7763, General Code, who after a complaint made against such parent, guardian or other person in charge of the child or against the child himself, under a law re-

Permitting child to leave jurisdiction of court; penalty.



lating to compulsory education, before a court of competent jurisdiction, and before such complaint is heard causes or permits such child to leave the territory under the jurisdiction of the court, shall upon conviction be fined not less than fifty nor more than two hundred dollars or be imprisoned in jail for not less than ten nor more than sixty days or both.

HISTORY.—R. S. § 4022-11; 86 v. 338, §§ 11, 12, 13; 87 v. 145; 87 v. 326; 90 v. 290, § 11; 95 v. 621, § 4022-11; 109 v. 398.

The subject matter in this section is entirely new.

Penalty for subsequent violation.

SECTION 12984. Whoever having been convicted of a violation of any provision of law relating to compulsory education or the employment of minors again violates such provision shall upon conviction, unless a penalty for a second or subsequent violation of the given provision is elsewhere specifically provided by law, be punished for the second offense by a fine of not less than twenty nor more than two hundred dollars or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third or other subsequent offense by a fine of not less than thirty nor more than five hundred dollars or by imprisonment for not more than sixty days or by both such fine and imprisonment.

HISTORY.—R. S. § 4022-11; 86 v. 338, §§ 11, 12, 13; 87 v. 145; 87 v. 326; 90 v. 290, § 11; 95 v. 621, § 4022-11; 109 v. 398.

The subject matter formerly in this section now found in section 12981. This section now contains subject matter formerly in section 12986.

Where a greater punishment may be inflicted for a second offense, the fact that the offense is a second one must be averred in order to justify the increased punishment: *Larney v. Cleveland*, 34 O. S. 599.

Trial by jury in such cases.

SECTION 12985. On complaint before a mayor, justice of the peace or police judge of such a second or further violation of a law relating to compulsory education or the employment of minors, if a trial by jury is not waived, a jury shall be chosen and proceedings had therein as provided by law in cases of violation of the laws for the prevention of cruelty to animals and children.

HISTORY.—R. S. § 4022-11; 86 v. 338, §§ 11, 12, 13; 87 v. 145; 87 v. 326; 90 v. 290, § 11; 95 v. 621, § 4022-11; 109 v. 398.

The subject matter formerly in this section now found in section 12982. This section now contains the subject matter formerly in section 12987.

Costs in certain prosecutions.

SECTION 12986. No person or officer instituting proceedings under any of the thirteen sections next preceding shall be required to file or give security for the costs. If a defendant is acquitted or if convicted and committed to jail in default of payment of fine and costs, the justice, mayor, police judge or judge of the juvenile court before whom such case was brought shall certify such costs to the county auditor, who shall examine the amount and if necessary correct it, and issue his warrant on the county

treasurer in favor of the respective persons to whom such costs are due for the amount due to each.

HISTORY.—R. S. § 4022-12; 90 v. 290, § 12; 95 v. 622, § 4022-12; 109 v. 399.

The subject matter formerly in this section now found in section 12984. This section now contains the subject matter formerly in section 12988.

SECTION 12987. Any person who when engaging to be employed or seeking employment states falsely his age for the purpose of evading any law relating to the employment of minors or females under the age of twenty-one years shall upon conviction be punished by a fine of not less than twenty nor more than fifty dollars or by imprisonment for not more than thirty days; provided, however, that if the minor is under eighteen years of age a charge shall be brought against him in the juvenile court as a delinquent child.

False statement as to age when seeking employment; penalty.

HISTORY.—R. S. § 4022-12; 90 v. 290, § 12; 95 v. 622, § 4022-12; 109 v. 399.

The subject matter formerly in this section now found in section 12985. The subject matter in this section is entirely new.

SECTION 12988. If a person between eighteen and twenty-one years of age falsely makes oath that he is twenty-one years of age or above when engaging to be employed or seeking employment the employer shall be exempt from the operation of section 6245-2, General Code, in respect to that person.

False oath as to being 21 years of age; penalty.

HISTORY.—R. S. § 4022-14; 90 v. 291, § 14; 95 v. 622, § 4022-14; 109 v. 399.

The subject matter formerly in this section now found in section 12986. The subject matter in this section is entirely new.

SECTION 12993. No child under sixteen years of age shall be employed, permitted or suffered to work in or about any (1) mill, (2) factory, (3) workshop, (4) oil well or pumping station, (5) cannery or bottling or preserving establishment, (6) mercantile or mechanical establishment, (7) tenement house, (8) garment making or dress making or millinery establishment or working room, (9) store, (10) office, (11) office building, (12) laboratory, (13) restaurant, (14) hotel, boarding house, or apartment house, (15) bakery, (16) barber shop, (17) bootblack stand or establishment, (18) public stable, (19) garage, (20) laundry, (21) place of amusement, (22) club, (23) or as a driver or chauffeur, (24) or in any coal yard or brick, lumber, or building material yard, (25) or in the construction or repair of buildings, (26) or in the transportation of merchandise; nor any boy under sixteen or female under twenty-one years of age in the personal delivery of messages, but except as to the personal delivery of messages by females under twenty-one years of age this section shall not apply to holders of age and schooling certificates under sections 7766-6, 7766-9 or 7770-3, General Code.

Regulating the employment of minors in factories, etc.

HISTORY.—99 v. 30, § 1; 99 v. 32, § 3; 103 v. 664 (907); 109 v. 399. For an analogous section, see R. S. § 6986-7.

Sections 1008 G. C. and 12993 are not in conflict regarding the employment of females in the transmission of messages.

Section 1008 prohibits females over eighteen years of age to be employed more than a certain number of hours in any one day or week in the establishments or vocations therein named when under the law they are permitted to be engaged in such employment.

Section 12993 absolutely forbids a female under twenty-one years of age to be employed in the transmission of messages. Op. Atty. Gen. (1917), p. 1923.

Employment  
of child dur-  
ing school  
hours, un-  
lawful, when.

SECTION 12993-1. It shall be unlawful for any person, firm or corporation to employ, permit, or suffer to work any child who is required by law to be in attendance at school in any business or occupation whatever during the hours when the public schools of the district in which the child resides, including the school or class to which the child is assigned, are in session.

HISTORY.—109 v. 399.

In part the subject matter in this section was formerly in section 12976.

Damage on  
failure to re-  
turn certificate  
on termination  
of employ-  
ment.

SECTION 12995. Upon failure on the part of an employer to return an age and schooling certificate or give notice of the non-use thereof within two days after the termination of the employment of a child, the child terminating his employment shall be entitled to recover from such employer in a civil action as damages an amount equal to the wages which he would have earned had he continued in said employment for the period between such termination thereof and the time when such certificate is so returned or said notice given. If such a child at any time fails to appear for work without explanation, the employment shall be deemed within the purposes of this section to have terminated upon the expiration of two days after his so failing to appear.

HISTORY.—99 v. 30, § 1; 103 v. 864 (907); 109 v. 400. For an analogous section, see § 6966-7; 97 v. 321; 95 v. 598; 93 v. 123, § 1.

Two lists of  
minors em-  
ployed shall be  
kept and one  
conspicuously  
posted.

SECTION 12998. No child under eighteen years of age shall be employed, permitted or suffered to work in, about or in connection with any establishment or occupation named in section 12993, General Code, or any place of employment, exchange or headquarters, unless the person, firm or corporation employing such child keeps two complete lists of the names, together with the ages, of all children under eighteen years of age, employed in or for such establishment or in such occupation, one on file, and one conspicuously posted near the principal entrance of the place or establishment in which such children are employed.

Every employer shall post and keep posted in a conspicuous place in every room of any establishment or business named in section 12993, General Code, or this section, where any boy under the age of eighteen or any female under the age of twenty-one is employed, permitted or suffered to work a printed notice stating the maximum of hours such person may be required or permitted to work on each day of the week, the hours of commencing and stopping



work, and the hours allowed for dinner and for other meals. The printed form of such notices shall be furnished by the industrial commission of Ohio and the employment of any minor for a longer time in any day than so stated or at any time other than as stated in said printed notice shall be deemed a violation of the provisions of the laws relating to the employment of minors.

In case the duties of the person are such as to cause him to move from room to room it shall be deemed compliance with the requirements of the above paragraph for the notice to be kept posted in the office or room to which such person reports or which serves as his headquarters.

Printed notice of working hours shall be posted.

**HISTORY.**—99 v. 30, § 1; 99 v. 32 § 3; 103 v. 864 (908); 109 v. 400. The act of which this section is a part includes G. C. §§ 1319, et seq., 1639, et seq., 1815, et seq., 2384, et seq., 3370, et seq., 4083, et seq., 7676, et seq., 7763, et seq., 10062, et seq., 12957, et seq., 12993, et seq. The part of this act which regulates the employment of minors includes G. C. 12957 to 13007-14 inclusive, and G. C. § 13018. For an analogous section, see R. S. § 6986-8.

**SECTION 12999.** Any employer who refuses to permit a minor in his employ to attend a part-time school or class as defined by law, when such minor is required by law so to attend, or arrange the hours of the minor's work so as to make possible such attendance, or dismisses a minor from his employ because of the minor's compliance with the law in respect to such attendance, or otherwise obstructs a minor's attendance at part-time school or class shall upon conviction for a first offense be punished by a fine of not less than ten nor more than fifty dollars; and upon conviction for subsequent offense by the penalties provided in section 12984, General Code.

Hindering or obstructing attendance at part-time school or class, unlawful.

**HISTORY.**—99 v. 30, § 1; 103 v. 864 (909); 109 v. 400. For an analogous section, see R. S. § 6986-8.

**SECTION 13000.** Failure to produce for lawful inspection the age and schooling certificate provided by law, or the record as provided in section twelve thousand nine hundred and ninety-eight, shall be prima facie evidence of the illegal employment or service of the child whose certificate is not so produced or whose record is not so correctly kept.

Certificate as prima facie evidence.

**HISTORY.**—99 v. 30, § 1. For an analogous section, see R. S. § 6986-7. This section is practically identical with section 12978 as amended in 1921.

**SECTION 13007-1.** An inspector of factories, attendance officer, or other officer charged with the enforcement of the laws relating to the employment of minors or school attendance may make demand on any employer in or about whose place or establishment or material or equipment a person apparently under the age of eighteen years is employed or permitted or suffered to work, and whose employment certificate is not filed as required by this act, that such employer shall furnish him satisfactory evidence that such person is in fact over eighteen years of age. The inspector of fac-

Demand when age and schooling certificate not filed; evidence required.

tories, attendance officer, or other officer charged with the enforcement of such laws, shall require from such employer unless an overage certificate is held by the employee the same evidence of age of such child as is required upon the issuance of an age and schooling certificate. Failure of such employer to produce such evidence shall be deemed a violation of the laws relating to the employment of minors.

**HISTORY.**—103 v. 864 (910); 109 v. 402. The act of which this section is a part includes G. C. §§ 1349, et seq., 1639, et seq., 1815-8, et seq., 2084, et seq., 3070, et seq., 4083, et seq., 7676, et seq., 7763, et seq., 10082, et seq., 12957, et seq., 12993, et seq. The part of this act which regulates the employment of minors includes G. C. §§ 12957 to 13007-14 inclusive, and G. C. § 13018.

Who shall  
make com-  
plaint.

**SECTION 13007-7.** It shall be the duty of inspectors of factories, attendance officers and other officers charged with the enforcement of laws relating to the employment of minors to make complaint by filing the proper affidavit before a court having competent jurisdiction against any person, firm or corporation violating any of the provisions of law relating to the employment of minors and to prosecute the same.

This shall not be construed as a limitation upon the right of other persons to make and prosecute such complaints.

**HISTORY.**—103 v. 864 (912); 109 v. 401. The act of which this section is a part includes G. C. §§ 1349, et seq., 1639, et seq., 1815-8, et seq., 2084, et seq., 3070, et seq., 4083, et seq., 7676, et seq., 7763, et seq., 10082, et seq., 12957, et seq., 12993, et seq. The part of this act which regulates the employment of minors includes G. C. §§ 12957 to 13007-14 inclusive, and G. C. § 13018.

False state-  
ment as to  
age; penalty.

**SECTION 13007-8.** Any person who with the intent to assist a minor or female under the age of twenty-one years to procure employment makes a false statement regarding the age of such person to an employer or to a person authorized to issue age and schooling certificates shall upon conviction be punished by a fine of not less than twenty nor more than fifty dollars or by imprisonment for not more than thirty days.

**HISTORY.**—108 v. 864 (912); 109 v. 401.

Penalty for  
first violation.

**SECTION 13007-9.** Any person, firm or corporation, agent or manager of any firm or corporation, who, whether for himself or for such firm or corporation, or by himself, or through an agent, servant or foreman, employs and whoever having under his control as parent, guardian, custodian or otherwise any minor permits or suffers a minor or female under the age of twenty-one years to be employed or to work in violation of any of the provisions of the laws relating to the employment of such minors or females under the age of twenty-one years for which the penalty is not otherwise provided by law shall for a first offense be punished upon conviction by a fine of not less than ten nor more than fifty dollars.

**HISTORY.**—103 v. 864 (912); 109 v. 401. For an analogous section, see P. & A. Code § 13004, which was 99 v. 31, 32, §§ 2, 3; see, also, R. S. § 6266-1.

SECTION 13007-10. Whoever continues to employ any minor or any female under twenty-one years of age in violation of any of the provisions of the laws relating respectively to the employment of minors or females under the age of twenty-one after being notified thereof in writing by a factory inspector, attendance officer or other officer charged with the enforcement of such laws shall for every day thereafter that such employment continues be fined upon conviction not less than five nor more than twenty dollars.

Continuing employment after notice of violation; penalty.

HISTORY.—103 v. 864 (912); 109 v. 402. For an analogous section, see P. & A. Code § 13004, which was 99 v. 31, 32, §§ 2, 3; see, also, R. S. § 6986-1. The act of which this section is a part includes G. C. §§ 1349, et seq., 1639, et seq., 1815-8, et seq., 2084, et seq., 3070, et seq., 4083, et seq., 7676, et seq., 7763, et seq., 10082, et seq., 12957, et seq., 12993, et seq. The part of this act which regulates the employment of minors includes G. C. §§ 12957 to 13007-14 inclusive, and G. C. § 12018.

SECTION 13007-14. Any minor or female under twenty-one years of age working in or in connection with any of the establishments or places or in occupations with respect to which there are restrictions of law governing the employment of persons of his probable age who refuses to give to an authorized employee of the industrial commission of Ohio or other authorized inspector or attendance officer his name, age and place of residence shall be forthwith conducted by such authorized employee, inspector or attendance officer before the juvenile court or other court having jurisdiction in the premises for examination and to be dealt with according to law.

Person under 21 years of age refusing to give age, taken before juvenile court.

HISTORY.—108 v. 864 (913); 109 v. 402.

SECTION 13030. Whoever, being a male person over twenty-one years of age and superintendent, tutor or teacher in a private, parochial or public school, or a seminary or other public institution, or instructor of a female in music, dancing, roller skating, athletic exercise, or other branch of learning, has sexual intercourse with a female, with her consent, while under his instruction during the term of his engagement as such superintendent, tutor or instructor, shall be imprisoned in the penitentiary not less than two years nor more than ten years.

Sexual intercourse with female pupil.

HISTORY.—R. S. § 7024; 83 v. 92; 75 v. 142, § 2.

For proof of carnal knowledge, see G. C. § 13672.

General Code § 13671 provides that in prosecutions under this section a conviction shall not be had on the testimony of the female unsupported by other evidence to the extent required as to the principal witnesses in case of perjury.

A male teacher, who has sexual intercourse with a female under his instruction, with her consent, at her father's house, after school hours of one day, and before school hours of the succeeding day, during the term of his engagement as her instructor, is liable to punishment under this section: *Brown v. State*, 38 O. S. 374.

Where a music teacher, who is employed to give a certain number of lessons but not for a definite time, has intercourse with a female pupil during the time of such employment, it is within the meaning of this section: *Esley v. State*, 10 O. C. C. (N. S.) 169, 19 O. C. D. 568.



In an indictment under this section it is necessary to aver that the teacher and pupil were not husband and wife: *Esley v. State*, 10 O. C. C. (N. S.) 169, 19 O. C. D. 568.

The positive testimony of a witness of an act of sexual intercourse between a teacher and a female pupil, that such act occurred at a certain place on Wednesday, is sufficient to sustain a verdict of guilty, even though the complaining witness testified that no such act occurred at that place except on Sunday. Such testimony will not be excluded as not corroborative of the complaining witness: *Esley v. State*, 10 O. C. C. (N. S.) 169, 19 O. C. D. 568.

In a prosecution under Section 13030, General Code, it is error to admit as evidence in behalf of the state an affidavit charging the accused with being the father of the bastard child of the pupil. *Wertenberger v. State of Ohio*. 99 O. S. 353.

## CHAPTER 32

### JUVENILE COURT

#### SECTION.

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#### SECTION.

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- 1683-9. Provisions for mother's pensions; tax levy.

SECTION 1639. Courts of common pleas, probate court, and insolvency courts and superior courts, where established shall have and exercise, concurrently, the powers and jurisdiction conferred in this chapter. The judges of such courts in each county, at such times as they determine, shall designate one of their number to transact the business arising under such jurisdiction. When the term of the judge so designated expires, or his office terminates, another designation shall be made in like manner. In case of the temporary absence or disability of the judge so designated another designation shall be made in like manner to cover the period of such absence or disability.

The words, juvenile court when used in the statutes of Ohio shall be understood as meaning the court in which the judge so designated may be sitting while exercising such jurisdiction, and the words "judge of the juvenile court" or "juvenile judge" as meaning such judge while exercising such jurisdiction.

The foregoing provisions shall not apply to Hamilton county, in which county the powers and jurisdiction conferred in this chapter shall be exercised by the court of

What courts having powers and jurisdiction.

Procedure in absence of judge.

Definitions.

Jurisdiction in Hamilton county.

common pleas, and in 1914 and every sixth year thereafter, one of the common pleas judges to be elected at said times shall be elected as a judge of the court of common pleas, division of domestic relations. To him shall be assigned all juvenile court work arising under this chapter, and all divorce and alimony cases, and whenever said judge of the court of common pleas, division of domestic relations, shall be sick, absent or unable to perform his duties, the presiding judge of the common pleas court shall assign another common pleas judge to perform his duties during his illness, absence or indisposition.

HISTORY.—99 v. 192, § 1; 103 v. 864 (868); 104 v. 176; 108 v. Pt. II 1130. For an analogous statute, see R. S. §§ 548-36f, 548-37.

The legislature has established the juvenile court in the exercise of its police power, to protect children and to remove them from evil influences: *Children's Home v. Fetter*, 90 O. S. 110.

Where a delinquent child has become a ward of the juvenile court and it has been committed to an institution, under the provisions of the General Code relating to the juvenile court, a proceeding in habeas corpus by a parent against the institution or its officers for the custody of the child will not lie: *Children's Home v. Fetter*, 90 O. S. 110.

The probate courts of this state acting as juvenile courts under the provisions of G. C. §§ 1639, et seq., are courts of record, and their judgments, where jurisdiction of the person and subject-matter has been acquired and no fraud has intervened, are conclusive and can be assailed in no other court in an independent proceeding: *Children's Home v. Fetter*, 90 O. S. 110.

The juvenile court act, which provides for the care of delinquent children, does not declare delinquency a crime; and such statutes are corrective and not criminal: *In re Januszewski*, 197 Fed. 123, 10 O. L. R. 151.

"Juvenile Court" defined.

SECTION 1639-1. The term "juvenile court" as used in this act [G. C. §§ 1643, 1672, and 3093] shall be construed as applying to such courts as are created by section 1639 and all other courts now or hereafter created to administer the provisions of law relating to dependent, delinquent and neglected children.

HISTORY.—108 v. Pt. I 260 (262), § 2.

Seal.

SECTION 1640. The seal of the court, the judge of which is designated to transact such business, shall be attached to all writs and processes.

HISTORY.—99 v. 192, § 2.

Appearance docket and journal.

SECTION 1641. The clerk of the court of the judge exercising the jurisdiction shall keep an appearance docket and a journal, in the former of which shall be entered the style of the case and a minute of each proceeding and in the latter of which shall be entered all orders, judgments and findings of the court.

HISTORY.—99 v. 192, § 3. For an analogous statute, see R. S. § 548-36f.

Jurisdiction.

SECTION 1642. Such courts of common pleas, probate courts, insolvency courts and superior courts within the pro-



visions of this chapter shall have jurisdiction over and with respect to delinquent, neglected and dependent minors, under the age of eighteen years, not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent neglected and dependent children, and their parents, guardians, or any person, persons, corporation or agent of a corporation, responsible for, or guilty of causing encouraging, aiding, abetting or contributing toward the delinquency, neglect or dependency of such minor, and such courts shall have jurisdiction to hear and determine any charge or prosecution against any person, persons, corporations, or their agents, for the commission of any misdemeanor involving the care, protection, education or comfort of any such minor under the age of eighteen years.

**HISTORY.**—99 v. 192, § 4; 103 v. 864 (868). For an analogous statute, see R. S. § 548-36e.

Courts of probate are courts of record and their records import verity; *Children's Home v. Fetter*, 90 O. S. 110.

It is not necessary that the negative averments of this section, relating to jurisdiction over and with respect to delinquent and dependent and neglected minors, shall be incorporated in the affidavits under which arrests are made: *Walton v. State*, 3 Ohio App. 97, 19 O. C. C. (N. S.) 452.

Where the probate court, after acquiring jurisdiction over a minor child, orders it to be committed to the children's home of the county and there kept in custody until the further order of the court, without making an express finding that the child is dependent, and later awards the custody of the child to its mother, in a subsequent habeas corpus proceeding brought by the father against the mother, the common pleas court will not award the custody of the child to the father on the ground that the action of the probate court over the child continues during its minority: *State v. Mezgar*, 59 Bull. 45 (Ed.).

If the probate court, after acquiring jurisdiction over a minor, finds that its best interests require that it should be committed to the children's home and orders it to be so committed and there received, cared for, educated and kept in custody until further orders of the court, and the child is so committed, without making an express finding that the child is dependent, in a later proceeding in habeas corpus, the common pleas court will not inquire whether the action of the probate court was sustained by the evidence taken before it: *State v. Mezgar*, 59 Bull. 45 (Ed.).

The criminal jurisdiction of the juvenile court is partly exclusive and partly concurrent with that of other criminal courts. In all cases in which the judgment acts directly upon the infant himself it is exclusive, and in all cases in which it is necessary to establish the delinquency of a child as a substantive part of the offense such jurisdiction is also exclusive. In cases of offenses against infants under statutes in existence prior to the creation of the juvenile court the jurisdiction is concurrent, and as to statutes creating offenses since the establishment of the juvenile court the jurisdiction is either exclusive or concurrent. *Op. Atty. Gen.* (1918), p. 389.

Because of the age limitation imposed by section 1653-1 G. C., a delinquent female minor child under the age of ten years cannot legally be committed to the Girls' Industrial School by the probate court, in the exercise of its juvenile jurisdiction.

Disposition of such a child should be made in one of the ways provided by sections 1652 and 1352-5 G. C. *Op. Atty. Gen.* (1919), p. 673.

The juvenile court has jurisdiction over and with respect to all delinquent, neglected and dependent minors within the county, and

the fact that some or all of the acts of misconduct upon which a delinquency charge is based were committed outside of the county does not rob the court of its jurisdiction to determine the status of the child and proceed accordingly. Op. Atty. Gen. (1918), p. 840.

In the administration of the juvenile act, good policy in most cases suggests that the juvenile court of the county of the minor's residence be permitted to determine the minor's status.

Where a minor child under the age of eighteen years is a resident of A—— county, but while in W—— county violates a law of the state of Ohio, such minor may, as a matter of law, be proceeded against as a juvenile delinquent person in either the juvenile court of A—— county, or the juvenile court of W—— county.

The court first acquiring the jurisdiction would, however, retain it to the exclusion of any other court, until the case were finally disposed of. Op. Atty. Gen. (1919), p. 648.

Where a minor under the age of 18 years, to-wit, of the age of 17 years, commits an act of delinquency, but said minor is not, while under 18 years of age, brought within the juvenile court's jurisdiction by the filing of an affidavit and the service of citation or warrant, said court is thenceforth without jurisdiction to permit the filing of an affidavit against said minor and adjudge him a juvenile delinquent person.

A minor under the age of 18 years, to-wit, of the age of 17 years, commits an act of delinquency and is duly adjudged a juvenile delinquent person and committed, as a ward of the court, to an institution. While in the institution said minor becomes 18 years of age. He then confesses that he committed another act of delinquency while he was still 17 years of age. Held: That the juvenile court has no authority to entertain a new affidavit against said minor and to make a further order as to his custody.

A minor of the age of 17 years commits an act of delinquency and in so doing is induced and aided by an adult. Affidavits are filed against both the minor and the adult. Each is apprehended and brought into court, being served with proper process for that purpose. By order of the court said cases are continued for a period of one month. In the meantime said minor arrives at the age of 18 years. Held: That while this question is not free from doubt, the liberal construction required by section 1683 G. C. to be given the juvenile act suggests the desirability of applying the following as the proper administrative rule, until court decision holds contra: That the juvenile court does not lose its jurisdiction over said minor nor over the adult defendant, but may proceed to hear and determine said cases, even though said minor is not, at the time of said hearing and determination, under the age of 18 years.

A minor is adjudged a juvenile delinquent person by the juvenile court and committed to an institution. While confined therein, said minor arrives at the age of 18 years. He then confesses to another act of delinquency committed before his 18th birthday, implicating an adult person who induced and aided him to commit the offense. Held: that the juvenile court is without jurisdiction to entertain an affidavit under section 1654 G. C. against the adult aider and inducer and try said adult defendant thereon. Op. Atty. Gen. (1920), p. 296.

The juvenile court has no jurisdiction in a bastardy proceeding, even where the defendant and the mother of the child are under 16 years of age. Op. Atty. Gen. (1917), p. 2228.

A boy came into the custody of the juvenile court prior to his becoming eighteen years of age and was placed on probation by the court upon certain conditions. After arriving at the age of eighteen years he violated this probation. Held, if the violation of probation in this case consisted of a violation of some rule of conduct imposed by the juvenile court upon this boy prior to his becoming eighteen years of age, the juvenile court can now deal with such boy in exactly the same manner as if he were still under

eighteen years of age, except that the court is without authority to commit such boy to the boys' industrial school. If, however, the violation of probation consisted of the commission of some offense against the state laws or local ordinances since such boy became eighteen years of age, the juvenile court has no jurisdiction in the punishment of such offense and the boy should be proceeded against in the same manner and in the same court as though he were an adult. Op. Atty. Gen. (1917), p. 1914.

SECTION 1643. When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The power of the court over such child shall continue until the child attains such age. Provided, in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment.

When jurisdiction terminates.

No court shall issue a writ of habeas corpus against any parties holding a child by reason of commitment of the juvenile court before such parties have been heard by the court to which application has been made for such writ and their rights to hold such child have been finally determined by the proper court.

When writ of habeas corpus may issue.

HISTORY.—99 v. 192, § 4; 103 v. 864 (869); 108 v. Pt. I 260.

Under this section the jurisdiction over an incorrigible child continues until he attains the age of twenty-one: *Children's Home v. Fetter*, 90 O. S. 110.

Under this section a court may make an order permitting an incorrigible child to make his home with his father on certain days of the week, and with his mother on the remaining days of the week, subject to certain conditions and provided that final judgment of commitment to any other person, place, or institution, should be suspended as long as such child should comply with such conditions, in the opinion of the judge, without losing jurisdiction of such case; and the court may thereafter remove such child from the custody of its parents and commit it to a county children's home: *Children's Home v. Fetter*, 90 O. S. 110.

When a minor child under the age of eighteen years is arrested and taken before a justice of the peace and the latter transfers the case to the judge of the juvenile court as provided by section 1659 G. C. costs are taxable in favor of the justice of peace and the constable and should be paid as provided in section 1682 G. C.

Where a minor child under the age of eighteen years is a resident of Warren county but while in Clermont county violates a law of the state of Ohio such minor may be proceeded against as a juvenile delinquent person in the juvenile court of Warren county. Op. Atty. Gen. (1919), p. 260.

Under section 1643 G. C., for all necessary purposes of discipline and protection, when a child under the age of eighteen years comes into the custody of a juvenile court, under the provisions of the juvenile court act, such child shall continue a ward of the court and under its continuing jurisdiction until such child attains the age of twenty-one years or is adopted under section 1672 G. C., and such facts being made to appear in a juvenile court of another county in a subsequent proceeding therein, the latter court is without jurisdiction to permanently commit said child under section 1653 et seq. G. C., but pending the final hearing may make necessary



orders for the temporary well being of such child. Op. Atty. Gen. (1919), p. 591.

Dependent girls committed by the juvenile court to the temporary care and custody of the board of state charities, remain under the legal control and guardianship of the court until they attain the age of twenty-one years, should such commitment for temporary care endure that length of time.

Dependent girls committed by the juvenile court to the permanent care and custody of the board of state charities come under the sole and exclusive guardianship of such board, and such board shall, in the absence of any proceedings meanwhile for the legal adoption of such children, retain their guardianship until they arrive at the age of eighteen years. Op. Atty. Gen. (1920), p. 1009.

See Opinions of Attorney General (1917), p. 1914, cited under Sec. 1642.

Delinquent  
child defined.

SECTION 1644. "DELINQUENT CHILD DEFINED." For the purpose of this chapter, the words "Delinquent child" includes any child under eighteen years of age who violates a law of this state, or a city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly visits or enters a house of ill repute; or who knowingly patronizes or visits a policy shop or place where any gambling device or gambling scheme is, or shall be, operated or conducted; or who patronizes or visits a saloon or dram shop where intoxicating liquors are sold; or who patronizes or visits a public pool or billiard room or bucket shop; or who wanders about the streets in the night time; or who wanders about railroad yards or tracks, or jumps or catches on to a moving train, traction or street car, or enters a car or engine without lawful authority, or who uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct; or who uses cigarettes, cigarette wrapper or substitute for either, or cigars, or tobacco; or visits or frequents any theater, gallery, penny arcade or moving picture show where lewd, vulgar or indecent pictures, exhibitions or performances are displayed, exhibited or given, or who is an habitual truant; or who uses any injurious or narcotic drug. A child committing any of the acts herein mentioned shall be deemed a juvenile delinquent person, and be proceeded against in the manner hereinafter provided.

HISTORY.—99 v. 192, § 5; 103 v. 864 (869); 106 v. 458. For an analogous statute, see R. S. §§ 548-36d, 548-38.

In a prosecution for contributing to the delinquency of a minor, the affidavit, in order to charge a crime, must allege that the minor is under eighteen years of age, and is a delinquent within the meaning of the statute, and that the defendant is guilty of contributing to such delinquency: *Willison v. State*, 3 Ohio App. 244, 21 O. C. C. (N. S.) 526.

Where the charge of the court, taken in its entirety, is such that it is evident that the jury understood it in a manner so as to apply the law correctly, it will not be held erroneous, even though it contains some statements that are not strictly clear or proper: *Smith v. State*, 14 O. C. C. (N. S.) 257, 24 O. C. D. 661.

A person owning and conducting a house of ill-repute is guilty of contributing to the delinquency of a minor under seventeen years of age, where it is shown that such minor was admitted by

a person apparently acting as a servant or employee and making no inquiry as to the age of the minor: *Smith v. State*, 14 O. C. C. (N. S.) 257, 24 O. C. D. 661.

Delinquency has not been declared a crime in Ohio, and the Ohio juvenile act is neither criminal or penal in its nature, but is an administrative police regulation of a corrective character; and while the commission of a crime may set the machinery of the juvenile court in motion, the accused was not tried in that court for his crime, but for incorrigibility: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

While G. C. § 1648 provides for an affidavit, and not for an indictment, it is not invalid under Art. I, § 10, of the constitution of Ohio, which provides that the accused can be held to answer for an infamous crime only upon presentation by the grand jury; since delinquency is not made a crime by this section: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

The keeper of a pool table in a pool room at a public place where no billiard tables are kept, who permits a minor under the age of eighteen years to be and remain in such pool room, is amenable to criminal prosecution under sections 12962 and 12963 of the General Code of Ohio. *Op. Atty. Gen.* (1919), p. 320.

When the juvenile court finds a girl over 16 years to be delinquent, such court is not required to send her to the Ohio Reformatory for Women, but may, if it sees fit, send her to such institution or to the Girls' Industrial School, or other institution for juvenile delinquency. *Op. Atty. Gen.* (1917), p. 974.

When a juvenile court has found a minor to be delinquent such court may impose a fine not exceeding \$10.00, by reason of the provisions of section 1654 General Code.

There is no provision in law for appealing or prosecuting error from the judgment of a juvenile court.

A juvenile judge has exclusive jurisdiction in all but felony cases with respect to minors under 18 years of age. *Op. Atty. Gen.* (1917), p. 1586.

SECTION 1645. For the purpose of this chapter, the words "dependent child" shall mean any child under eighteen years of age who is dependent upon the public for support; or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who begs or receives alms; or who is given away or disposed of in any employment, service, exhibition, occupation or vocation contrary to any law of the state; who is found living in a house of ill fame, or with any vicious or disreputable persons or whose home, by reason of neglect, cruelty or depravity on the part of its parent, step-parent, guardian or other person in whose care it may be, is an unfit place for such child; or who is prevented from receiving proper education or proper physical, mental, medical or surgical examination and treatment because of the conduct, inability or neglect of its parents, step-parent, guardian or other person in whose care it may be; or whose condition or environment is such as to warrant the state, in the interest of the child, in assuming its guardianship.

Dependent  
child defined.

HISTORY.—99 v. 193, § 6; 103 v. 864 (869); 106 v. 458 (459); 109 v. 361. For an analogous statute, see R. S. § 548-36d.

Where a girl, 16 years of age, a ward of the juvenile court of A. county, gave birth to a child in the maternity hospital in B. county, and with said child is still residing in the latter county, and where said child became a dependent child, as defined in section 1645 G. C., upon complaint being filed according to law in

the juvenile court of B. county, that court has jurisdiction over such child and the juvenile court of A. county is without jurisdiction. Op. Atty. Gen. (1919), p. 271.

"Proper  
parental care"  
defined.

SECTION 1646. A child within the provisions of this chapter whose parents, step parents or guardian permits it to use or become addicted to the use of tobacco, or intoxicating liquors as a beverage and not for medicinal purposes, or any injurious or narcotic drug, or whose parents or guardian fears, keeps or permits it in or about a saloon or place where intoxicating liquors are sold, or a gambling house or place where gambling is practiced or carried on, or a house of ill fame, or ill repute, shall be deemed to be without proper parental care or guardianship. The word "child" or "children" may mean one or more children and includes males and females. The word "parent" may mean one or both parents or step parents when consistent with the intent of this chapter. The word "minor" means child.

HISTORY.—99 v. 193, § 6; 103 v. 864 (870). For an analogous statute, see R. S. §§ 548-36d, 548-38.

Who may  
file complaint.

SECTION 1647. Any person having knowledge of a minor under the age of eighteen years who appears to be either a delinquent, neglected or dependent child, may file with such juvenile court a complaint, sworn to, which may be upon information and belief, and for that purpose such complaint shall be sufficiently definite by using the word delinquent, or dependent, as the facts may be.

HISTORY.—99 v. 193, § 7; 103 v. 864 (870). For an analogous statute, see R. S. §§ 548-33g, 548-39.

In a prosecution for contributing to the delinquency of a minor, the affidavit, in order to charge a crime, must allege that that the minor is under eighteen years of age, and is a delinquent within the meaning of the statute, and that the defendant is guilty of contributing to such delinquency: *Willison v. State*, 3 Ohio App. 244, 21 O. C. C. (N. S.) 526.

General Code §§ 1647 and 1648, conferring on juvenile courts authority to determine cases involving delinquent, neglected and dependent children, do not supersede G. C. § 11987, empowering common pleas courts to make orders for the disposition, care and maintenance of children of parents involved in divorce proceedings: *Orphan Asylum v. Soule*, 24 O. C. C. (N. S.) 151, 26 O. C. D. 135, 60 Bull. 449 (Ed.), 60 Bull. 473 (Ed.) [citing *In re Crist*, 89 O. S. 33; *Children's Home v. Fetter*, 90 O. S. 110].

A court of common pleas, having made an order concerning the disposition of a minor child of parents involved in divorce proceedings, has continuing jurisdiction of such child, precluding a juvenile court from taking independent jurisdiction thereof. If the best interests of the child demand a change of custody the proper procedure is by application to the common pleas court to modify its former order: *Orphan Asylum v. Soule*, 24 O. C. C. (N. S.) 151, 26 O. C. D. 135, 60 Bull. 449 (Ed.), 60 Bull. 473 (Ed.) [citing *In re Crist*, 89 O. S. 33; *Children's Home v. Fetter*, 90 O. S. 110].

The principle that the court first obtaining jurisdiction of a subject-matter retains exclusive jurisdiction and authority until final disposition, applies to jurisdiction of a dependent child, concerning which a common pleas court has made an order for the custody in divorce proceedings, and a juvenile court has no authority to make an order for the disposition of such child: *Orphan Asylum v. Soule*, 24 O. C. C. (N. S.) 151, 26 O. C. D. 135,



60 Bull. 449 (Ed.) 60 Bull. 473 (Ed.) [citing *In re Crist*, 89 O. S. 33; *Children's Home v. Fetter*, 90 O. S. 110].

SECTION 1648. Upon filing of the complaint, a citation shall issue, requiring such minor to appear, and the parents or guardian or other person, if any, having custody or control of the child, or with whom it may be, to appear with the minor at a time and place to be stated in the citation; or the judge may in the first instance, issue a warrant for the arrest of such minor or for any person named in the complaint and charged therein with having abused or abandoned, or charged therein with neglect of or being responsible for or having encouraged, aided or abetted the delinquency or dependency of such child, or having acted in a way tending to cause delinquency in such child. A parent, step parent, guardian or other person not cited may be subpoenaed to appear and testify at the hearing. Any one cited or subpoenaed to appear who fails to do so, may be punished as in other cases in the common pleas court for contempt of court. Whenever it shall appear from affidavit that a parent or guardian or other person having the custody of such child resides or has gone out of the state or that his or her place of residence is unknown so that such citation cannot be served on him or her, the clerk shall cause such citation to be published once in a newspaper of general circulation throughout the county, and published in the county, if there be one so published. The citation shall state the nature of the complaint, and the time and place of the hearing, which shall be held at least two weeks later than the date of the publication; and a copy of such citation shall be sent by mail to the last known address of such parent, guardian or other person having custody of such child, unless said affidavit, shows that a reasonable effort has been made without success to ascertain such address. The certificate of the clerk that such publication has been made or such citation mailed shall be sufficient evidence thereof. Until the time for the hearing arrives, the court shall make such temporary disposition of such child as it may deem best. When said period of two weeks from the time of publication shall have elapsed, said court shall have full jurisdiction to deal with such child as provided by this chapter. When a person charged with violating a provision of this chapter shall have fled from justice in this state, such judge shall have all the powers of a magistrate under the laws of this state relating to fugitives from justice.

Caution,  
war. ant., con-  
tempt.

HISTORY.—99 v. 193, § 8; 103 v. 864 (870). For an analogous statute, see R. S. §§ 548-36h, 548-40.

General Code §§ 1647 and 1648 conferring on juvenile courts authority to determine cases involving delinquent, neglected and dependent children, do not supercede G. C. § 11987, empowering common pleas courts to make orders for the disposition, care and maintenance of children of parents involved in divorce proceedings: *Orphan Asylum v. Soule*, 24 O. C. C. (N. S.) 151, 26 O. C. D. 135, 60 Bull. 449 (Ed.) 60 Bull. 473 (Ed.) [citing *In re Crist*, 89 O. S. 33; *Children's Home v. Fetter*, 90 O. S. 110].

The principle, that the court first obtaining jurisdiction of a subject-matter retains exclusive jurisdiction and authority until final disposition, applies to jurisdiction of a dependent child, concerning which a common pleas court has made an order for the custody in divorce proceedings, and a juvenile court has no authority to make an order for the disposition of such child: *Orphan Asylum v. Soule*, 24 O. C. D. 135 60 Bull. 449 (Ed.), 60 Bull. 473 (Ed.) [citing *In re Crist*, 89 O. S. 33; *Children's Home v. Fetter*, 90 O. S. 110].

A court of common pleas, having made an order concerning the disposition of a minor child of parents involved in divorce proceedings, has continuing jurisdiction of such child, precluding a juvenile court from taking independent jurisdiction thereof. If the best interests of the child demand a change of custody the proper procedure is by application to the common pleas court to modify its former order: *Orphan Asylum v. Soule*, 24 O. C. C. (N. S.) 151, 26 O. C. D. 135, 60 Bull. Home v. Fetter, 90 O. S. 110].

While this section provides for an affidavit, and not for an indictment, it is not invalid under Art. I, § 10, of the constitution of Ohio, which provides that the accused can be held to answer for an infamous crime only upon presentation by the grand jury; since delinquency is not made a crime by G. C. § 1644: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

Delinquency has not been declared a crime in Ohio and the Ohio juvenile act is neither criminal or penal in its nature, but is an administrative police regulation of a corrective character; and while the commission of a crime may set the machinery of the juvenile court in motion, the accused was not tried in that court for his crime but for incorrigibility: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

See Opinions of Attorney General (1919), p. 648, cited under Sec. 1642.

Provision to  
avoid incar-  
ceration.

SECTION 1648-1. In any case where a child under the age of eighteen years is arrested with or without a warrant, in order to avoid the incarceration of such child, if practicable, the officer so arresting, unless otherwise ordered by the court shall accept the written promise of the parent, guardian or other person with whom such child resides, or any other reputable person, to be responsible for the presence of said child in the proper court at the time and place when such child is to appear, and at any other time to which the hearing in the case may be continued or adjourned by the court. Nothing herein contained shall be construed to prevent the admitting of such child to bail, in accordance with the general provisions of the crimes act.

HISTORY.—103 v. 864 (871).

Special room  
for juvenile  
court.

SECTION 1649. The county commissioners shall provide a special room not used for the trial of criminal cases, when avoidable, for the hearing of juvenile cases.

HISTORY.—99 v. 194, § 9. For an analogous statute, see R. S. § 548-36f.

Hearing.

SECTION 1650. On the day named in the citation or upon the return of the warrant of arrest, or as soon thereafter as may be, the judge shall proceed, in a summary manner to hear and dispose of the case, and the person arrested or cited to appear may be punished in the manner hereinafter provided.

HISTORY.—99 v. 194, § 10. For an analogous statute, see R. S. § 548-36h.

A court calendar is not required to be kept in the probate court; *Stark v. Stark*, 17 O. C. C. (N. S.) 398, 24 O. C. D. 135 [affirmed, without opinion, *Stark v. Stark*, 88 O. S. 586; citing *Millard v. Commissioners*, 13 O. C. C. 581, 7 O. C. D. 115].

This section, which authorizes the judge to determine the question of delinquency without a jury, is not rendered invalid by Art. I, § 5, of the constitution of Ohio, which provides that the right of trial by jury shall be inviolate; nor is it rendered invalid by the fourteenth amendment to the constitution of the United States, which provides that no one shall be deprived of life, liberty, or property, without due process of law: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

The juvenile court act, which provides for the care of delinquent children, does not declare delinquency a crime; and such statutes are corrective and not criminal: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

Inasmuch as the privileges and immunities of a citizen of the United States do not include the right to trial by jury in a state court even for a state offense or the right to be exempt from trial for an infamous crime except upon presentment by a grand jury, it follows that a jury trial is not essential in all cases to due process of law; and the commitment of the petitioner to the boys' industrial school for incorrigibility by the juvenile court of Cuyahoga county was not rendered invalid by reason of the fact that it was without the intervention of a jury, notwithstanding the charge in the affidavit upon which he was arrested was that he was a delinquent in that he maliciously and purposely shot R. M. with intent to kill. *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

SECTION 1651. Any person charged with violating any of the provisions of this chapter or being responsible for or with causing, aiding or contributing to the delinquency, dependency or neglect of a child, or with acting in a way tending to cause delinquency in a child, arrested or cited to appear before such court, at any time before hearing, may demand a trial by jury, or the judge upon his own motion may call a jury. The statutes relating to the drawing and impaneling of jurors in criminal cases in the court of common pleas, other than in capital cases, shall apply to such jury trial. The compensation of jurors and costs of the clerk and sheriff shall be taxed and paid as in criminal cases in the court of common pleas.

Jury trial;  
costs.

HISTORY.—99 v. 194, § 11; 103 v. 864 (871). For an analogous statute, see R. S. § 548-38.

A jury may be waived by a defendant in the juvenile court, and where he elects so to do it is not necessary that the waiver be in writing: *Walton v. State*, 3 Ohio App. 97, 19 O. C. C. (N. S.) 452.

SECTION 1652. In case of a delinquent child the judge may continue the hearing from time to time and may commit the child to the care or custody of a probation officer, and may allow such child to remain at its own home, subject to the visitation of the probation officer or otherwise, as the court may direct, and subject to be returned to the judge for further or other proceedings whenever such action may appear to be necessary; or the judge may cause the child to be placed in a suitable family home, subject to the friendly supervision of a probation officer, and the further order of the judge, or he may authorize the child to be boarded in some

Commitment.



suitable family home in case provision be made by voluntary contribution or otherwise for the payment of the board of such child, until suitable provision be made for it in a home without such payment; or the judge may commit such child, if a boy, to a training school for boys, or, if a girl, to an industrial school for girls, or commit the child to any institution within the county that may care for delinquent children, or be provided by a city or county suitable for the care of such children. In no case shall a child, committed to such institutions, be confined under such commitment after attaining the age of twenty-one years; or the judge may commit the child to the care and custody of an association that will receive it, embracing in its objects, the care of neglected or dependent children, if duly approved by the board of state charities, as provided by law. Where it appears at the hearing of a male delinquent child, that he is 16 years of age, or over, and has committed a felony, the juvenile court may commit such child to the Ohio state reformatory.

**HISTORY.**—99 v. 194, § 12; 103 v. 864 (871). In effect July 1, 1914. For an analogous statute, see R. S. §§ 548-361, 548-45.

Under this section a court may make an order permitting an incorrigible child to make his home with his father on certain days of the week, and with his mother on the remaining days of the week, subject to certain conditions and provided that final judgment of commitment to any other person, place or institution should be suspended as long as such child should comply with such conditions, in the opinion of the judge, without losing jurisdiction of such case; and the court may thereafter remove such child from the custody of its parents and commit it to a county children's home: *Children's Home v. Fetter*, 90 O. S. 110.

This section is not in conflict with G. C. § 1681. This section provides a different place for the confinement of delinquent children over sixteen years of age from the places of confinement to which other delinquent children may be committed, namely to the Ohio state reformatory; while G. C. § 1681 provides that delinquent children of any age charged with a felony may be indicted and subjected to the provisions of the general criminal statutes: *Leonard v. Licker*, 3 Ohio App. 377, 23 O. C. C. (N. S.) 422 [citing *Prescott v. State*, 19 O. S. 184].

The provisions of the General Code relating to delinquent children are reformatory in their nature and not penal. Accordingly, the provisions of this section that, "where it appears upon the hearing that such delinquent child is sixteen years of age, or over, and has committed felony" he may be committed to the Ohio state reformatory, are not unconstitutional: *Leonard v. Licker*, 3 Ohio App. 377, 23 O. C. C. (N. S.) 442 [citing *Prescott v. State*, 19 O. S. 184].

The Ohio state reformatory is a prison for persons who are convicted of felonies and committed thereto by a sentence of the court following such conviction; while for delinquent children who have been committed thereto after having committed an act which constitutes a felony, it is only a school or place of reformation: *Leonard v. Licker*, 3 Ohio App. 377, 23 O. C. C. (N. S.) 442 [citing *Prescott v. State*, 19 O. S. 184].

General Code § 1681 is discretionary and not mandatory, and a delinquent child charged with a felony may be committed as provided in this section or recognized to the court of common pleas, subject to the requirements of the general criminal laws of the state, at discretion of the juvenile judge: *Leonard v. Licker*, 3 Ohio App. 377, 23 O. C. C. (N. S.) 442 [citing *Prescott v. State*, 19 O. S. 184].

In case of the separation of parents, the custody of an epileptic son who is twenty years of age and an inmate of an epileptic hospital will be granted to the father, the evidence showing that he is a suitable and proper person to look after the interest of such child: *Patterson v. Patterson*, 12 O. N. P. (N. S.) 601, 57 Bull. 273 (Ed.).

If husband and wife have separated, the custody of the children is to be granted so as to secure the best interests of such children: *Patterson v. Patterson*, 12 O. N. P. (N. S.) 601, 57 Bull. 273 (Ed.).

Delinquency has not been declared a crime in Ohio, and the Ohio juvenile act is neither criminal or penal in its nature, but is an administrative police regulation of a corrective character; and while the commission of a crime may set the machinery of the juvenile court in motion, the accused was not tried in that court for his crime, but for incorrigibility: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

Repugnancy of a state statute to the constitution of the state does not afford ground for the granting of a writ of habeas corpus by a federal court upon application of one convicted thereunder, unless the petitioner is in custody by virtue of such statute and the statute is in conflict with the constitution of the United States: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

A boy over sixteen years of age is committed to the Ohio state reformatory by the juvenile court by virtue of section 1652 of the General Code. The state is not liable for the costs in the case. Such costs must be paid from the county treasury upon the certificate of the juvenile judge, as provided in section 1682 G. C. Op. Atty. Gen. (1918), p. 324.

See Opinions of Attorney General as follows:

(1917), p. 1914, cited under Sec. 1642.

(1919), p. 673, cited under Sec. 1642.

(1917), p. 974, cited under Sec. 1644.

SECTION 1652-1. Any child coming within the provisions of this chapter may be subjected to a physical and mental examination by a competent physician or physicians, to be appointed by the Juvenile Court. Whenever any such child is committed to any institution by virtue of the provision of this chapter, a record of such examination or examinations shall be sent with the commitment to such institution. The Juvenile Court shall tax as part of the costs, a reasonable fee for such examination.

Examination by competent physician; record sent with commitment.

HISTORY.—103 v. 864 (872); 109 v. 523.

SECTION 1653. When a minor under the age of eighteen years, or any ward of the court under this chapter, is found to be dependent or neglected, the judge may make an order committing such child to the care of the children's home if there be one in the county where such court is held, if not, to such a home in another county, if willing to receive such child, for which the county commissioners of the county in which it has a settlement, shall pay reasonable board; or he may commit such child to the board of state charities or to some suitable state or county institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or an industrial school, as provided by law, or to the care of some association willing to receive it, which embraces within its objects the purposes of caring for or obtaining homes for dependent, neglected or delinquent children or any of them, and which has been

Commitment to institution or suitable person.

approved by the board of state charities as provided by law. When the health or condition of the child shall require it, the judge may cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive it for like purposes without charge. The court may make an examination regarding the income of the parents or guardian of a minor committed as provided by this section and may then order such parent or guardian pay the institution or board to which the minor has been committed reasonable board for such minor, which order, if disobeyed, may be enforced by attachment as for contempt.

**HISTORY.**—99 v. 195, § 13; 103 v. 864 (872). For an analogous statute, see R. S. §§ 548-36j, 548-42.

Where a delinquent child has become a ward of the juvenile court and it has been committed to an institution, under the provisions of the General Code relating to the juvenile court, a proceeding in habeas corpus by a parent against the institution or its officers for the custody of the child will not lie: *Children's Home v. Fetter*, 90 O. S. 110.

The probate courts of this state acting as juvenile courts under the provisions of G. C. §§ 1639 et seq., are courts of record and their judgments, where jurisdiction of the person and subject-matter has been acquired and no fraud has intervened, are conclusive and can be assailed in no other court in an independent proceeding: *Children's Home v. Fetter*, 90 O. S. 110.

The juvenile court act, which provides for the care of delinquent children, does not declare delinquency a crime; and such statutes are corrective and not criminal: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

The juvenile judge has no authority to contract with physicians for medical attention to be rendered a pauper ward of the court nor any authority to contract with a hospital for treatment or care of such patient. *Op. Atty. Gen.* (1917), p. 739.

See *Opinions of Attorney General* (1919), p. 591, cited under Sec. 1643.

Section 1653 G. C. while authorizing commitments by the juvenile court of dependent and neglected children to the care of suitable private individuals of good moral character, makes no provision in such cases for payment by the county commissioners of the board of such committed children.

Section 3092 G. C. as amended in 109 O. L., p. 533, confers no authority upon county commissioners to pay the board of neglected and dependent children committed by the juvenile court to the care of private families or individuals in counties where a county children's home is provided. *Op. Atty. Gen.* No. 2915, Mar. 9, 1922.

Age limitations.

**SECTION 1653-1.** The provisions of section 1652 shall not apply to the girls' industrial school or the boys' industrial school, so far as the same allows the commitment of a child under ten years or over eighteen years of age to such institution. In no case shall a child found to be a dependent or neglected child be committed to such institution, nor shall any child under ten years or over eighteen years of age, be committed to such schools except as provided in section 2111 of the General Code.

**HISTORY.**—101 v. 379; 103 v. 864 (873).

The sheriff is not the proper officer to convey girls to the Girls' Industrial School, and if he performs such service he may not collect any fee therefor. The proper officer to render such



service is the probation officer, and there must be at least one probation officer in every county. The expenses of such transportation, are payable out of the county treasury on the certificate of the juvenile judge, as provided in section 1682. Op. Atty. Gen (1918), p. 341.

See Opinions of Attorney General as follows:

(1919), p. 673, cited under Sec. 1642.

(1917), p. 1914, cited under Sec. 1642.

SECTION 1654. Whoever abuses a child or aids, abets, induces, causes, encourages or contributes toward the dependency, neglect or delinquency, as herein defined, of a minor under the age of eighteen years, or acts in a way tending to cause delinquency in such minor, shall be fined not less than ten dollars, nor more than one thousand dollars or imprisoned not less than ten days nor more than one year, or both. Each day of such contribution to such dependency, neglect or delinquency, shall be deemed a separate offense. If in his judgment it is for the best interest of a delinquent minor, under the age of eighteen years, the judge may impose a fine upon such delinquent not exceeding ten dollars, and he may order such person to stand committed until fine and costs are paid.

Penalty for abuse or aiding and abetting delinquency.

HISTORY.—99 v. 195, § 14; 103 v. 864 (873). For an analogous statute, see R. S. § 548-36y.

Where a person has been in jeopardy upon an information or affidavit charging that he contributed to the moral delinquency of a female person in violation of G. C. § 1654, such jeopardy can not be successfully pleaded as a bar to a prosecution by indictment on a charge of rape under G. C. § 12143. The provision of the constitution relating to jeopardy is in the following words: "No person shall be twice put in jeopardy for the same offense." The offense charged in the information is not the same offense and does not include the offense charged in the indictment, and hence the defense of jeopardy must fail: State v. Rose, 89 O. S. 383.

While G. C. § 12370, which provides that the word "imprisoned" means "imprisoned in the county jail" if the maximum term prescribed for the offense is one year, does not apparently apply to this section, since by its terms G. C. § 12370 deals with the interpretation of part four only, the word "imprisoned" as used in this section means "imprisoned in the county jail." Accordingly, G. C. § 4128 authorizes the court to commit offenders over sixteen years of age to the workhouse: Walton v. State, 3 Ohio App. 97, 19 O. C. C. (N. S.) 452.

General Code § 4128 authorizes the court to impose a sentence to the workhouse upon one who is convicted, under this section, of contributing towards the delinquency of a minor under seventeen years of age: Walton v. State, 3 Ohio App. 97, 19 O. C. C. (N. S.) 452.

In a prosecution for contributing to the delinquency of a minor, the affidavit, in order to charge a crime, must allege that the minor is under eighteen years of age, and is a delinquent within the meaning of the statute, and that the defendant is guilty of contributing to such delinquency: Willison v. State, 3 Ohio App. 244, 21 O. C. C. (N. S.) 526.

A person owning and conducting a house of ill-repute is guilty of contributing to the delinquency of a minor under seventeen years of age, where it is shown that such minor was admitted by a person apparently acting as a servant or employee and making no inquiry as to the age of the minor: Smith v. State, 14 O. C. C. (N. S.) 257, 24 O. C. D. 661.

Where a person owns and conducts a house of ill-repute, the duty is imposed on her to know that those whom she permits

in her house and to act apparently as her servants, shall obey the law, and in case they do not, she as principal and proprietor of the house, in which the delinquency occurs is liable to pay the penalty of the statute: *Smith v. State*, 14 O. C. C. (N. S.) 257, 24 O. C. D. 661.

Where a person is charged under this section with contributing to the delinquency of a minor under seventeen years of age, by renting a room to her for the purpose of illicit intercourse, and the testimony shows that the minor went there for that purpose, it is not error to permit testimony to be given as to the reputation of the house in which such room is located: *Smith v. State*, 14 O. C. C. (N. S.) 257, 24 O. C. D. 661.

Where the charge of the court, taken in its entirety, is such that it is evident that the jury understood it in a manner so as to apply the law correctly, it will not be held erroneous, even though it contains some statements that are not strictly clear or proper: *Smith v. State*, 14 O. C. C. (N. S.) 257, 24 O. C. D. 661.

Where a fine has been imposed by a court against a defendant on his conviction of a criminal offense, and the defendant dies before collection of such fine, or any part thereof, and before the same has been levied upon property of the defendant, such fine can not be collected from his estate after his death: *State, ex rel., v. Keifer*, 16 O. N. P. (N. S.) 41, 24 O. D. (N. P.) 321 [affirmed by court of appeals, without opinion].

See Opinions of Attorney General as follows:

(1917), p. 1586, cited under Sec. 1644.

(1919), p. 320, cited under Sec. 1644.

Failure or  
neglect to sup-  
port; penalty.

**SECTION 1655.** Whoever is charged by law with the care, support, maintenance or education of a minor under the age of eighteen years, and is able to support or contribute toward the support or education of such minor, fails, neglects, or refuses so to do, or who abandons such minor, or who unlawfully beats, injures, or otherwise ill treats such minor, or causes or allows him or her to engage in common begging, upon complaint filed in the juvenile court, as provided in this chapter, shall be fined not less than ten dollars, nor more than five hundred dollars, or imprisoned not less than ten days nor more than one year, or both. Such neglect, non-support, or abandonment shall be deemed to have been committed in the county in which such minor may be at the time of such neglect, non-support, or abandonment. Each day of such failure, neglect, or refusal shall constitute a separate offense, and the judge may order that such person stand committed until such fine and costs are paid.

**HISTORY.**—99 v. 196, § 15; 103 v. 864 (873). For an analogous statute, see R. S. §§ 548-86m, 548-47.

Prosecutions for violations of section 1655 G. C., in the counties of Montgomery, Mahoning, Summit and Lucas, should be brought in the court of domestic relations for the reason that such court in those counties has been given exclusive jurisdiction in juvenile matters. *Op. Atty. Gen.* (1918), p. 257.

Expense for  
return of ac-  
cused who has  
fled to an-  
other state.

**SECTION 1655-1.** When a person charged with the violation of any provision of the foregoing section, has fled to another state, or territory, and the governor has issued a requisition for such person, the board of county commissioners shall pay from the general expense fund of the county to the agent designated in such requisition, all

necessary expenses incurred in pursuing and returning such prisoner so charged.

HISTORY.—109 v. 53.

SECTION 1656. When a person is convicted and sentenced under this chapter for the abandonment of, or for the neglect of, or failure to maintain or support a minor, to imprisonment in a workhouse, the county from which such prisoner is so sentenced, shall pay from the general revenue fund fifty cents, for each day such prisoner is so confined, to the chief probation officer of such county, to be by him expended, under the direction of the judge, for the maintenance of the dependent minors of such prisoner, of which expenditure such officer shall make monthly reports to the judge. The county commissioners of such county shall make the allowances herein provided for, which shall be paid by the county treasurer from the county treasury upon the warrant of the county auditor in favor of such probation officer.

Provisions in case of workhouse sentence.

HISTORY.—99 v. 196, § 16; 103 v. 864 (873). For an analogous statute, see R. S. § 548-86zc.

SECTION 1657. Pending final disposition of a case, the judge may commit any person arrested or cited to appear, except the minor under fourteen years of age, to the county jail until the case is disposed of, but such trial shall be commenced with four days of such commitment unless upon the request of the defendant. Pending final disposition, the judge may direct that the minor in question be left in the possession of the person having charge of him, or that he be kept in some suitable place provided by the county or city authorities.

Commitment to county jail, etc.

HISTORY.—99 v. 196, § 17. For an analogous statute, see R. S. §§ 548-861, 548-86n, 548-40, 548-46.

A juvenile under fourteen years of age may not, pending final disposition of his case, be confined in a cell in the upper part of the county jail even though such cell is separate and apart from the county jail proper. Op. Atty. Gen. (1918), p. 1592.

It is necessary that the trial of the accused, under the juvenile court laws, who has been committed pending the final disposition of the case, be commenced within four days of such commitment, unless otherwise requested by the defendant. Op. Atty. Gen. (1918), p. 160.

SECTION 1658. If it appear upon the hearing that any person not cited to appear, has probably abused or has aided, induced, caused, encouraged, or contributed to the dependency, neglect or delinquency of a minor under the age of eighteen years, or acted in a way tending to cause delinquency in such minor, or that a person, charged by law, with the care, support, education and maintenance of any minor, has abandoned, failed, refused, or neglected, being able to do so, to support, or sufficiently contribute toward the support, education and maintenance of such minor, the judge may order such person to be cited to appear at a subsequent day, or may issue a warrant to arrest such person as here-

Citation or arrest ordered after hearing.



inbefore provided, and upon citation, warrant and hearing the same proceedings may be had as in the first instance.

HISTORY.—99 v. 196, § 18; 103 v. 864 (874).

Transfer of  
case to  
juvenile court.

SECTION 1659. When a minor under the age of eighteen years is arrested, such child, instead of being taken before a justice of the peace or police judge, shall be taken directly before such juvenile judge; or, if the child is taken before a justice of the peace or a judge of the police court, it shall be the duty of such justice of the peace or such judge of the police court, to transfer the case to the judge exercising the jurisdiction herein provided. The officers having such child in charge shall take it before such judge, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before the judge in the first instance.

HISTORY.—99 v. 197, § 19; 103 v. 864 (874). For an analogous statute, see R. S. §§ 548-36m, 548-46.

Proceedings in *habeas corpus* will not be allowed to take the place of proceedings in error. If a judgment in a criminal case is erroneous, but not absolutely void, it can not be collaterally attacked.

*Habeas corpus* will not lie to secure the discharge of a minor who was indicted for a felony and convicted in the court of common pleas, but did not challenge the jurisdiction of the court until motion for new trial, or prosecute error, on the ground that he was under eighteen years of age and should have been first taken before the juvenile court, in accordance with the provisions of Section 1659, General Code. Ex parte Pharr. 10 Ohio App. 395.

See Opinions of Attorney General as follows:

(1919), p. 260, cited under Sec. 1643.

(1917), p. 1914, cited under Sec. 1642.

(1918), p. 257, cited under Sec. 1655.

(1918), p. 341, cited under Sec. 1653-1.

Writs, to  
whom issued.

SECTION 1660. The summons, warrants, citations, subpoenas and other writs of such judge may issue to a probation officer of any such court or to the sheriff of any county, and the provisions of law relating to the subpoenaing of witnesses in criminal cases shall apply in so far as they are applicable.

HISTORY.—99 v. 197, § 20; 103 v. 864 (874).

A warrant of the court is not authority for the sheriff or probation officer to arrest a delinquent child outside the state of Ohio. There is no provision in law for the payment of the expenses of the sheriff or probation officer in pursuing and arresting such child outside the state. Op. Atty. Gen. (1918), p. 980.

See Opinions of Attorney General (1919), p. 1433, cited under Sec. 1682.

Expense; how  
paid.

SECTION 1661. When a summons or warrant is issued to any such officer, the expense in pursuing and bringing the person named therein, before such judge, shall be paid by the county in the manner prescribed by law for the payment of deputies, assistants and other employes of county officers.

HISTORY.—99 v. 197, § 21; 103 v. 864 (874).

See Opinions of Attorney General (1919), p. 1433, cited under Sec. 1682.

SECTION 1662. The judge designated to exercise jurisdiction may appoint one or more discreet persons of good moral character, one or more of whom may be a woman, to serve as probation officers, during the pleasure of the judge. One of such officers shall be known as chief probation officer and there may be one or more assistants. Such chief probation officer and assistants shall receive such compensation as the judge appointing them may designate at the time of the appointment; provided, however, that such compensation may be increased or decreased at any time by said judge, but the compensation of the chief probation officer shall not exceed three thousand dollars per annum and that of the assistants shall not exceed twenty-four hundred dollars per annum. The judge may appoint other probation officers, with or without compensation, when the interests of the county require it.

Probation officers, appointment; compensation; how paid.

The compensation of the probation officers shall be paid by the county treasurer from the county treasury upon the warrant of the county auditor, which shall be issued upon itemized vouchers sworn to by the probation officers and certified to by the judge of the juvenile court. The county auditor shall issue his warrant upon the treasury and the treasurer shall honor and pay the same, for all salaries, compensation and expenses provided for in this act, in the order in which proper vouchers therefor are presented to him.

HISTORY.—99 v. 197, §§ 22, 40; 103 v. 864 (874); 107 v. 19; 108 v. Pt. I 692; 108 v. Pt. II 1164; 109 v. 527. For an analogous statute, see R. S. §§ 548-361, 548-41.

The probation officer may be directed by the juvenile court to take juvenile delinquents to such places as they are by such court lawfully committed.

For the performance of such services, such probation officer is not entitled to the fees provided by law for sheriffs in like cases. Op. Atty. Gen. (1919), p. 480.

See Opinions of Attorney General as follows:

(1918), p. 341, cited under Sec. 1653-1.

(1917), p. 1361, cited under Sec. 1671.

No. 2497, (1921), cited under Sec. 7769-1.

SECTION 1663. When a complaint is made or filed against a minor, the probation officer shall inquire into and make examination and investigation into the facts and circumstances surrounding the alleged delinquency, neglect, or dependency, the parentage and surroundings of such minor, his exact age, habits, school record, and every fact that will tend to throw light upon his life and character. He shall be present in court to represent the interests of the child when the case is heard, furnish to the judge such information and assistance as he may require, and take charge of any child before and after the trial as the judge may direct. He shall serve the warrants and other process of the court within or without the county, and in that respect is hereby clothed with the powers and authority of sheriffs. He may make arrests without warrant upon reasonable information or upon view of the violation of any of the provisions of this chapter, detain the person so arrested pending

Duties and powers of probation officers.

the issuance of a warrant, and perform such other duties, incident to their offices, as the judge directs. All sheriffs, deputy sheriffs, constables, marshals and police officers shall render assistance to probation officers, in the performance of their duties when requested so to do.

HISTORY.—99 v. 198, § 23. For an analogous statute, see R. S. § 548-86i.

See Opinions of Attorney General as follows:

(1919), p. 648, cited under Sec. 1642.

(1919), p. 480, cited under Sec. 1662.

(1918), p. 341, cited under Sec. 1653-1.

Upon consideration therefore, it would seem conclusive that the duties of the officers considered are incompatible, and that a chief of police of a city may not lawfully perform the duties of a probation officer, or receive the compensation of such an officer while acting in the capacity of chief of police. Op. Atty. Gen. No. 2874, Feb. 20, 1922.

Prosecuting  
attorney,  
duty of.

SECTION 1664. On the request of the judge exercising such jurisdiction, the prosecuting attorney of the county shall prosecute all persons charged with violating any of the provisions of this chapter.

HISTORY.—99 v. 198, § 24.

Bail.

SECTION 1665. The provisions of law relating to bail in criminal cases in the common pleas court shall apply to persons committed or held under the provisions of this chapter so far as they are applicable.

HISTORY.—99 v. 198, § 25.

Suspension  
of sentence.

SECTION 1666. In every case of conviction and where imprisonment is imposed as part of the punishment, such judge may suspend sentence upon such conditions as he imposes.

HISTORY.—99 v. 198, § 26. For an analogous statute, see R. S. §§ 548-36z, 548-36za.

Forfeit of  
bond.

SECTION 1667. When, as a condition of suspension of sentence, bond is required and given, upon the failure of a person giving such bond to comply with the terms and conditions thereof, such bond may be forfeited, the suspension terminated by the judge, the original sentence executed as though it had not been suspended, and the term of any jail or workhouse sentence imposed in such case shall commence from the date of imprisonment of such person after such forfeiture and termination of suspension. Any part of such sentence which may theretofore have been served, shall be deducted from any such period of imprisonment.

HISTORY.—99 v. 198, § 27. For an analogous statute, see R. S. § 548-36zb.

Error pro-  
ceedings.

SECTION 1668. The provisions of the law relating to error proceedings from the court of common pleas, including the allowance and signing of bills of exceptions shall apply to prosecutions of persons over eighteen years of age under this chapter, and from the judgment of a judge of the court of common pleas in such prosecutions error may be prose-



cuted to the circuit court of the county under laws governing prosecution of proceedings in error in other criminal cases to such circuit court; and from the judgment of a judge of the probate court in such prosecution, error may be prosecuted to the common pleas court of the county under the laws governing prosecution of proceedings in error from the probate court to the court of common pleas. A petition in error shall not be filed either in the circuit court or court of common pleas except upon good cause shown, upon motion and notice to the prosecuting attorney, as in civil cases, or unless such motion is allowed by such courts.

HISTORY.—99 v. 198, § 28; 103 v. 405 (416); 103 v. 864 (875).

While this section does not authorize proceedings in error in prosecutions of persons under seventeen, such omission does not confer upon the delinquent child the right to attack the judgment of the juvenile court collaterally by a proceeding in habeas corpus: *In re Januszewski*, 196 Fed. 123, 10 O. L. R. 151.

SECTION 1669. The disposition of, or any order, judgment, or finding against a child under this chapter, or any evidence given in any proceeding thereunder, shall not in any civil, criminal or other cause or proceeding whatever in any court, be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases herein against the same child.

Findings, not  
lawful evi-  
dence.

HISTORY.—99 v. 199, § 29.

SECTION 1670. Upon the advice and recommendation of the judge exercising the jurisdiction provided herein, the county commissioners shall provide by purchase or lease, a place to be known as a "detention home" within a convenient distance of the court house, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent or neglected minors under the age of eighteen years may be detained until final disposition, which place shall be maintained by the county as in other like cases. In counties having a population in excess of forty thousand, the judge may appoint a superintendent and matron who shall have charge of said home, and of the delinquent, dependent and neglected minors detained therein. Such superintendent and matron shall be suitable and discreet persons, qualified as teachers of children. Such home shall be furnished in a comfortable manner as nearly as may be as a family home. So far as possible delinquent children shall be kept separate from dependent children in such home. The compensation of the superintendent and matron shall be fixed by the county commissioners. Such compensation and the expense of maintaining the home shall be paid from the county treasury upon the warrant of the county auditor, which shall be issued upon the itemized voucher, sworn to by the superintendent and certified by the judge. In all such homes the sexes shall be kept separate, so far as practicable.

Detention  
home, how  
established  
and conducted.

HISTORY.—99 v. 199, § 30; 103 v. 864 (875).

Under sections 1670 and 1671 G. C., upon the advice and recommendation of the juvenile judge, the commissioners should

provide, by purchase or lease, a detention home, and in counties having a population less than forty thousand the commissioners are authorized to provide the necessary persons to care for said home and for the children therein. Op. Atty. Gen. (1917), p. 1518.

See Opinions of Attorney General as follows:

(1919), p. 1433, cited under Sec. 1682.

No. 2492, (1921), cited under Sec. 7676.

Expenses of  
detention  
home.

SECTION 1671. When such detention home is provided by the county commissioners, and upon such home being recommended by the judge, the commissioners shall enter an order on their journal transferring to the proper fund from any other fund or funds of the county, in their discretion, such sums as may be necessary to purchase or lease such home and properly furnish and conduct it and pay the compensation of the superintendent and matron. The commissioners shall likewise upon the appointment of probation officers, transfer to the proper fund from any other fund or funds of the county, in their discretion, such sums as may be necessary to pay them, and such transfers shall be made upon the authority of this chapter. At the next tax levying period, provisions shall be made for the expenses of the court.

HISTORY.—99 v. 199, § 30.

The proper fund mentioned in section 1671 General Code is considered to be a juvenile court fund from which all the expenses of the juvenile court is paid and such expenses include the salary of the probation officer.

Section 1682 G. C. makes provision for the payment of all necessary incidental expenses of the juvenile court and its officers and the probation officer is considered an officer of such court. Op. Atty. Gen. (1917), p. 1361.

See Opinions of Attorney General (1917), p. 1518, cited under Sec. 1670.

When child is  
in temporary  
or permanent  
care and  
custody.

SECTION 1672. If the court awards a child to the care of an institution, association, or a state board in accordance with the provisions of this and other chapters, the judge shall in the award or commitment designate whether it is for temporary or permanent care and custody. If for temporary care, the award or commitment shall not be for more than twelve months, and before the expiration of such period the court shall make other disposition of the matter, or recommit the child in the same manner. During such period of temporary care the institution, association or state board to which such child is committed shall not place it in a permanent foster home, but shall keep it in readiness for return to parents or guardian whenever the court shall so direct. At any time during such temporary custody the institution or board to whom such child is committed, may, whenever there is an opportunity to place such child in a foster home by adoption, request the court to determine whether such commitment should be modified to include permanent care and custody. Whenever a child is committed to the permanent care of an institution, association or a state board, it shall ipso facto come under the sole and exclusive guardianship of such institution, association or state

board, whereupon the jurisdiction of the court shall cease and determine, except that such institution, association or board, to which such child is permanently committed may petition said court to make other disposition of such child because of physical, mental or moral defects. Such institution, association or state board may place such child in a foster family home and shall be made a party to any proceedings for the legal adoption of the child. Assent on the part of such institution, association or state board shall be sufficient to authorize the judge to enter the proper order or decree of adoption. In a similar manner the court may award a child to the care or guardianship of an individual, but such individual shall not place such child in the care of another person or assent to adoption except upon order of said juvenile court; such guardianship shall not include the guardianship of any estate of the child. For the purpose of information and co-operative supervision the juvenile court shall report monthly to the board of state charities the names of children committed to institutions and individuals; provided that such report shall not include a child coming under the supervision and custody of the court but permitted to remain with parents or guardian. The board of state charities shall prepare and furnish suitable blanks for such reports.

Procedure  
in adoption.

Monthly re-  
port by  
juvenile court  
to board of  
state charities.

**HISTORY.**—99 v. 199, § 31; 103 v. 864 (876); 108 v. Pt. I 260. For an analogous statute, see R. S. §§ 548-36k, 548-44.

An orphan asylum or children's home organized under the laws of this state may give consent to the adoption of an inmate thereon, provided it was voluntarily surrendered to the institution or was previously abandoned by its parents. In no case does a private institution for the care and support of minor children become the legal guardian of the inmates of the institution, and therefore has no authority to grant consent to the adoption of the inmates of the institution, excepting under the order of the juvenile court as set out in Section 1672 G. C. Op. Atty. Gen. (1918), p. 1598.

Dependent children, temporarily committed by the juvenile court, to the care and custody of the board of state charities (now department of public welfare, division of charities), under the provisions of section 1672 G. C. may in turn be placed temporarily in the home of a mother or parent by said board under the provisions of section 1352-3 G. C. for a period of time not to exceed twelve months, subject to the court's approval, when the mother or parent is morally a fit custodian, and the home provided by her is free from evil influences which may be considered detrimental to the child's welfare.

Under the provisions of section 1352-4 G. C. the amount of board paid for the care of such child, and the expense of providing suitable clothing and personal necessities is chargeable by the board of state charities (now the department of public welfare, division of charities) to the county from which such child was committed, and the duty of the county treasurer, upon the warrant of the county auditor to pay such expense, is mandatory. Op. Atty. Gen. No. 2900, Feb. 25, 1922.

See Opinions of Attorney General (1919), p. 591, cited under Sec. 1643.

**SECTION 1673.** The parents, parent, guardian or other person or persons having the right to dispose of a dependent or neglected child may enter into an agreement with any

Agreement  
with incorpo-  
rated institu-  
tion for care  
of child.



association or institution, incorporated under any law of this state which has been approved by the board of state charities as provided by law, for the purpose of aiding, caring for or placing in homes such children, or for the surrender of such child to such association or institution, to be taken and cared for by such association or institution, or put into a family home. Such agreement may contain any and all proper stipulations to that end, and may authorize the association or institution, to appear in any proceeding, for the legal adoption of such child, and consent to its adoption. The order of the judge made upon such consent shall be binding upon the child and its parents, guardian or other person, as if such persons were personally in court and consented thereto, whether made party to the proceedings or not.

HISTORY.—99 v. 200, § 32; 103 v. 864 (876). For an analogous statute, see R. S. §§ 548-36r, 548-43.

Agent of  
certain insti-  
tutions; duties  
of.

SECTION 1674. The chief officer of the boys' industrial school, and of the girl's industrial school, and the manager of any other institution to which juvenile delinquents may be committed, shall, each, maintain agents of such institution, who shall examine the homes of children paroled for the purpose of reporting to such chief officer or manager, whether they are suitable homes, and assist children paroled or discharged from such institution in finding suitable employment, and maintain a friendly supervision over paroled inmates. Such agents shall hold office subject to the pleasure of the chief officer or manager making the appointment and shall receive such compensation as the Ohio board of administration may determine.

Compensation.

HISTORY.—99 v. 200, § 33; 103 v. 864 (876). For an analogous statute, see R. S. § 548-36o.

Judge may  
require report  
from institu-  
tion.

SECTION 1675. At any time the judge may require from an association receiving or desiring so to receive children, such reports, information and statements as he deems proper and necessary. He may at any time require from an association or institution, reports, information or statements concerning any child or children committed to it by him, under the provisions of this chapter.

HISTORY.—99 v. 200, § 34; 103 v. 864 (877). For an analogous statute, see R. S. §§ 548-36p, 548-48.

Associations of  
other states.

SECTION 1677. No association of another state, incorporated or otherwise, shall place a child in a family home within the boundaries of this state, either with or without indenture or for adoption, unless such association shall have furnished the board of state charities with such guaranty as it may require that no child having a contagious disease, deformity, feeble mind or vicious character, shall be brought into this state by such association or its agents, and that such association will promptly receive and remove from the state, a child brought into the state by its agents, which

shall become a public charge, within the period of five years thereafter.

HISTORY.—99 v. 201, § 36; 103 v. 864 (877). For an analogous statute, see R. S. § 548-36s.

SECTION 1678. Whoever violates any of the provisions of section 1677 shall be imprisoned in the county jail not more than thirty days, or fined not less than five dollars or more than one hundred dollars, or both, in the discretion of the judge. Penalty.

HISTORY.—99 v. 201, § 36; 103 v. 864 (877). For an analogous statute, see R. S. § 548-36s.

SECTION 1679. The judge in committing children shall place them, so far as practicable, in the care and custody of an individual holding the same religious belief as such child or its parents, or with some association which is controlled by persons of like religious faith as such child or its parents. Religious belief.

HISTORY.—99 v. 202, § 37. For an analogous statute, see R. S. §§ 548-36t, 548-50.

SECTION 1680. Nothing herein shall be construed to repeal any provision of law relating to the boys' industrial school or the girls' industrial school. How chapter construed as to industrial schools.

HISTORY.—99 v. 202, § 38; 103 v. 864 (877). For an analogous statute, see R. S. § 548-36n.

SECTION 1681. When any information or complaint shall be filed against a delinquent child under these provisions, charging him with felony, the judge may order such child to enter into a recognizance, with good and sufficient surety, in such amount as he deems reasonable, for his appearance before the court of common pleas at the next term thereof. The same proceedings shall be had thereafter upon such complaint as now authorized by law for the indictment, trial, judgment and sentence of any other person charged with a felony. When child is charged with felony.

HISTORY.—99 v. 202, § 39. For an analogous statute, see R. S. § 548-36zd.

This section is discretionary and not mandatory, and a delinquent child, charged with a felony, may be committed as provided in G. C. § 1652 or recognized to the court of common pleas, subject to the requirements of the general criminal laws of the state, at the discretion of the juvenile judge: *Leonard v. Licker*, 3 Ohio App. 377, 23 O. C. C. (N. S.) 442 [citing *Prescott v. State*, 19 O. S. 184].

General Code § 1652 is not in conflict with this section. G. C. § 1652 provides a different place for the confinement of delinquent children over sixteen years of age from the places of confinement to which other delinquent children may be committed, namely to the Ohio state reformatory; while this section provides that delinquent children of any age charged with a felony may be indicted and subjected to the provisions of the general criminal statutes: *Leonard v. Licker*, 3 Ohio App. 377, 23 O. C. C. (N. S.) 442 [citing *Prescott v. State*, 19 O. S. 184].

The provisions of the General Code relating to delinquent children are reformatory in their nature and not penal; accordingly, the provisions of G. C. § 1652, that, "where it appears upon the hearing that such delinquent child is sixteen years of age, or over, and has committed felony" he may be committed to the Ohio state reformatory, are not unconstitutional: *Leonard v. Licker*, 3 Ohio

App. 377, 23 O. C. C. (N. S.) 442 [citing *Prescott v. State*, 19 O. S. 184].

Fees and  
costs, how  
paid.

SECTION 1682. Fees and costs in all such cases with such sums as are necessary for the incidental expenses of the court and its officers, and the expense of transportation of children to places to which they have been committed, except the fees of the court and the fees and expenses of the sheriff and his deputies, shall be paid from the county treasury upon specifically itemized vouchers, verified by oath and certified to by judge of the court.

HISTORY.—99 v. 202, § 40; 108 v. Pt. II 1203 (1218). For an analogous statute, see R. S. § 548-36ze.

There is no statutory authority for the purchase, with county funds, of an automobile for the use of a probation officer of the juvenile court.

A probation officer may use his own automobile in the course of the performance of his official duties and be reimbursed, in the manner provided by section 1682 G. C., for the expense of gasoline and oil paid for by him in connection with such use of said automobile. Op. Atty. Gen. (1919), p. 1433.

See Opinions of Attorney General as follows:

(1919), p. 260, cited under Sec. 1643.

(1919), p. 480, cited under Sec. 1662.

(1917), p. 1391, cited under Sec. 1671.

(1918), p. 324, cited under Sec. 1652.

(1918), p. 341, cited under Sec. 1653-1.

Chapter to be  
liberally con-  
strued.

SECTION 1683. This chapter shall be liberally construed to the end that proper guardianship may be provided for the child, in order that it may be educated and cared for, as far as practicable in such manner as best subserves its moral and physical welfare, and that, as far as practicable in proper cases, the parent, parents or guardian of such child may be compelled to perform their moral and legal duty in the interest of the child.

HISTORY.—99 v. 202, § 40. For an analogous statute, see R. S. §§ 548-36v, 548-36ze.

See Opinions of Attorney General (1917), p. 1361, cited under Sec. 1671.

Jurisdiction.

SECTION 1683-1. The judge designated to transact the business arising under the jurisdiction conferred in this chapter shall have jurisdiction of all misdemeanors against minors, and of offenses prescribed in sections nine hundred and twenty-eight, six thousand three hundred and forty-four, six thousand three hundred and forty-five, six thousand three hundred and seventy-three, twelve thousand six hundred and sixty-four, twelve thousand six hundred and sixty-six, twelve thousand seven hundred and eighty-seven, thirteen thousand and thirty-one, thirteen thousand and thirty-five, and thirteen thousand and thirty-eight. In all such cases any person may file with the clerk of the judge exercising the jurisdiction an affidavit, setting forth briefly, in plain and ordinary language, the charges against the accused, and he shall be tried thereon, and in such prosecutions an indictment by the grand jury or information by the



prosecuting attorney shall not be required. The judge shall forthwith issue his warrant for the arrest of the accused, who, when arrested, shall be taken before said judge, and tried according to the provisions of this chapter, and, if found guilty, shall be punished in the manner provided for by law.

HISTORY.—102 v. 425.

#### MOTHERS' PENSIONS

SECTION 1683-2. For the support of women whose husbands are dead, or become permanently disabled by reason of physical or mental infirmity, or whose husbands are prisoners or whose husbands have deserted, and such desertion has continued for a period of three years, when such women are poor, and are the mothers of children not entitled to receive age and schooling certificates, and such mothers and children have a legal residence in any county of the state for two years, the juvenile court may make an allowance to each of such women as follows: not to exceed thirty-five dollars a month when she has but one child not entitled to an age and schooling certificate, and if she has more than one child not entitled to an age and schooling certificate, it shall not exceed thirty-five dollars a month for the first child and ten dollars a month for each of the other children not entitled to an age and schooling certificate. The order making such allowance shall not be effective for a longer period than six months, but upon the expiration of such period, said court may, from time to time, extend such allowance for a period of six months or less. Such homes shall be visited from time to time by a probation officer, the agent of an associated charities organization, or of a humane society as the court may direct, or in the absence of such probation officer, society or organization in any county, the sheriff of said county shall make such visits as directed by the probate court; provided that the person, other than the sheriff, who actually makes such visits, shall be thoroughly trained in charitable relief work, and the report or reports of such visiting agent shall be considered by the court in making such order for relief.

Mothers' pensions; who entitled to; allowance.

Visitation of homes and report.

HISTORY.—106 v. 436; 103 v. 864 (877); 109 v. 70.

A foster-mother is not a mother within the meaning of section 1683-2 of the General Code relating to mothers' pensions. Op. Atty. Gen. (1920), p. 181.

Under the provisions of the law relating to mothers' pensions, the widow of an unnaturalized person is entitled to a pension under the same conditions as is the widow of a naturalized citizen. Op. Atty. Gen. (1917), p. 268.

The residence of a mother and her children for three years in one county of this state immediately prior to a residence of one month in another county of this state meets the requirement of section 1683-2 G. C., 103 O. L. 877, as to the mother and children having a legal residence in any county for two years, and if in all other respects qualified, the mother may be granted an allowance under said section in the latter county. Op. Atty. Gen. (1916), p. 1549.

When a man, having a legal residence in this state, removes with his family to another state with no intention of making the latter state his home and with no intention of abandoning his residence in this state, he does not thereby lose his legal residence in this state by reason of an actual residence of four years in the state to which he removes. If, therefore, upon his death his wife and children return to their former home in this state they have the necessary qualifications as to residence required by section 1683-2, G. C., as amended 106 O. L., 436, providing for mothers' pensions. Op. Atty. Gen. (1916), p. 314.

County commissioners are without authority to extend aid to children in their own homes rather than in children's homes established by counties. The proper place to care for children who may require such aid is in children's homes, the only exception being in the case of the awarding of relief under the Mothers' Pension Act, sections 1683-2 to 1683-9 G. C. Op. Atty. Gen. (1916), p. 713.

See Opinions of Attorney General as follows:  
(1917), p. 334, cited under Sec. 1683-3.  
(1919), p. 52, cited under Sec. 1683-8.

Conditions of  
allowance.

SECTION 1683-3. Such allowance may be made by the juvenile court, only upon the following conditions: First, the child or children for whose benefit the allowance is made must be living with the mother of such child or children; second, the allowance shall be made only when in the absence of such allowance, the mother would be required to work regularly away from her home and children, and when by means of such allowance she will be able to remain at home with her children, except that she may be absent for work for such time as the court deems advisable; third, the mother must in the judgment of the juvenile court be a proper person, morally, physically and mentally for the bringing up of her children; fourth, such allowance shall in the judgment of the court be necessary to save the child or children from neglect and to avoid the breaking up of the home of such woman; fifth, it must appear to be for the benefit of the child to remain with such mother; sixth, a careful preliminary examination of the home of such mother must first have been made under the direction of the court by the probation officer, the agent of an associated charities organization or humane society, or in the absence of such probation officer, society or organization in any county, the sheriff of such county shall make such investigations as the court may direct, and a written report of the result of such examination or investigation shall be filed with the juvenile court, for the guidance of the court in making or withholding such allowance.

HISTORY.—106 v. 436; 103 v. 864 (878).

Section 1683-3 G. C. authorizes the juvenile court to make an allowance to a mother when in the absence of such allowance she would be required to work regularly away from her home or when in the absence of such allowance she would be required to be engaged regularly in outside employment in her own home. Op. Atty. Gen. (1917), p. 532.

(See Opinions of Attorney General (1917), p. 268, cited under Sec. 1683-2.

SECTION 1683-4. Whenever any child shall reach the age for legal employment, any allowance made to the mother of such child for the benefit of such child shall cease. The juvenile court may, in its discretion, at any time before such child reaches such age, discontinue or modify the allowance to any mother and for any child.

When allowance shall cease.

HISTORY.—103 v. 864 (878).

SECTION 1683-5. Should the fund at the disposal of the court for this purpose be sufficient to permit an allowance to only part of the persons coming within the provisions of this act, the juvenile court shall select those cases in most urgent need of such allowance.

Disposal of fund when amount insufficient.

HISTORY.—103 v. 864 (878).

SECTION 1683-6. The provisions of this act shall not apply to any woman who, while her husband is imprisoned receives sufficient of his wages to support the child or children.

To whom act does not apply.

HISTORY.—103 v. 864 (878).

SECTION 1683-7. Any person or persons fraudulently attempting to obtain any allowance for a person not entitled thereto, shall be deemed guilty of a misdemeanor and on conviction thereof, shall be punished by a fine of not less than five nor more than fifty dollars, or imprisoned in the county jail, for a period of not less than two months, or both.

Attempt to obtain allowance by fraud; penalty.

HISTORY.—103 v. 864 (878).

SECTION 1683-8. In each case where an allowance is made to any woman under the provisions of this act, a record shall be kept of the proceedings, and any citizen of the county may, at any time, file a motion to set aside, or vacate or modify such judgment and on such motion said juvenile court shall hear evidence, and may make a new order sustaining the former allowance, modify or vacate the same, and from such order, error may be presecuted, or an appeal may be taken as in civil actions. If the judgment be not appealed from, or error presecuted, or if appealed or error prosecuted, and the judgment of the juvenile court be sustained or affirmed, the person filing such motion shall pay all the costs incident to the hearing of such motion.

Record of proceedings.

Appeal; error.

HISTORY.—103 v. 864 (878).

The only court costs chargeable under the mothers' pension act are those incident to the hearing of the motion provided for under section 1683-3 G. C. Opinion of former Attorney-General on this subject approved. Op. Atty. Gen. (1919), p. 52.

SECTION 1683-9. It is hereby made the duty of the county commissioners to provide out of the money in the county treasury such sum each year thereafter as will meet the requirements of the court in these proceedings. To

Provisions for mothers' pensions; tax levy.



provide the same they shall levy a tax not to exceed one-fifth of a mill on the dollar valuation of the taxable property of the county. Such levy shall be subject to all the limitations provided by law upon the aggregate amount, rate, maximum rate and combined maximum rate of taxation. The county auditor shall issue a warrant upon the county treasurer for the payment of such allowance as may be ordered by the juvenile judge.

HISTORY.—103 v. 864 (879); 108 v. Pt. I 624.

## CHAPTER 33

### BLIND, DEAF, CRIPPLED AND DEFECTIVE CHILDREN AND INSTITUTIONAL TRAINING

#### OHIO COMMISSION FOR THE BLIND

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- 1363. Object of commission.
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## OHIO COMMISSION FOR THE BLIND

Ohio commission for the blind, appointment and term of members.

SECTION 1360. There shall be a state board to be known as the Ohio commission for the blind, consisting of six members, one of whom shall be the superintendent of the state school for the blind and five shall be appointed by the governor. Each year the governor shall appoint a member of the commission who shall hold office for a term of five years.

HISTORY.—99 v. 362, § 1; 99 v. 362, § 2.

Organization and compensation of appointees.

SECTION 1361. The commission for the blind shall elect one of its members as president, who shall preside at its meetings and have power to call meetings when he deems it advisable. The commission may appoint necessary officers and agents and fix their compensation within the limits of the annual appropriation, but no person so appointed shall be a member of the commission. The commission may make its own by-laws.

HISTORY.—99 v. 362, § 3; 99 v. 362, § 9.

Expenses of commission.

SECTION 1362. The members of the commission for the blind shall receive no compensation for their services, but their traveling and other necessary expenses incurred in the performance of their official duties, when approved by the president of the commission, shall be paid by the treasurer of state upon the order of the auditor of state.

HISTORY.—99 v. 364, § 11.

Object of commission.

SECTION 1363. The commission for the blind shall act as a bureau of information and industrial aid, the object of which shall be to assist the blind in finding employment and to teach them industries which may be followed in their homes.

HISTORY.—99 v. 363, § 5.

Duties of commission.

SECTION 1364. It shall be the duty of the commission for the blind to prepare and maintain a complete register of the blind in the state which shall describe the condition, cause of blindness, capacity for educational and industrial training of each, and such other facts as the commission deems of value.

HISTORY.—99 v. 363, § 4.



SECTION 1365. The commission for the blind may ameliorate the condition of the aged or helpless blind by promoting visits to them in their homes for the purpose of instruction and by such other lawful methods as the commission deems expedient.

Visits to aged or helpless blind.

HISTORY.—99 v. 363, § 8.

SECTION 1366. The commission for the blind may establish, equip and maintain schools for industrial training and workshops for the employment of suitable blind persons, pay the employes suitable wages and devise means for the sale and distribution of their products thereof. The commission may also provide or pay for during their training the temporary lodging and support of pupils or workmen received at any industrial schools or workshops established by it.

Schools and workshops.

HISTORY.—99 v. 363, § 6; 99 v. 363, § 7.

SECTION 1367. The commission for the blind shall make inquiries concerning the cause of blindness to ascertain what portion of such cases are preventable and co-operate with the state board of health in the adoption and enforcement of proper preventive measures.

Prevention of blindness.

HISTORY.—99 v. 363, § 10.

SECTION 1368. In furtherance of the purposes of this chapter, the commission for the blind shall have authority to use any receipts or earnings that accrue from the operation of industrial schools and workshops as provided in this chapter, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the auditor of state.

Use of receipts and earnings.

HISTORY.—99 v. 364, § 12.

SECTION 1369. The commission for the blind shall make an annual report to the governor of its proceedings for each fiscal year. It shall embody therein a properly classified and tabulated statement of its estimates for the ensuing year with its own opinion as to the necessity or expediency of appropriation in accordance with such estimates. Such annual report shall also present a concise review of the work of the commission for the preceding year with such suggestions and recommendations for improving the condition of the blind as may be expedient.

Blind commission; annual report.

HISTORY.—99 v. 363, § 9; 101 v. 347.

For the present statute with reference to the reports of state officers, see G. C. § 2264-1.

#### STATE SCHOOL FOR THE BLIND

SECTION 1884. The trustees of the state school for the blind may receive into the institution such blind and purblind persons, residents of the state, as they and the superintendent are satisfied, from reliable information and examination, are suitable in age and mental capacity to receive instructions by the methods therein pursued. No

Who may be admitted to school for the blind.

person shall be received who is addicted to immoral practices, or affected with a contagious or offensive disease. Subject to the approval of the trustees, the superintendent may reject or discharge from the institution any person who has sight sufficient to read common print continuously.

HISTORY.—R. S. § 665; 75 v. 150, § 12; S. & S. 48.

Rules for admission of pupils.

SECTION 1885. The regular pupils must be at least six years of age, and none can be admitted under eight years of age, except for special reasons. Pupils admitted under the age of fourteen years may remain until the age of twenty-one years, and pupils admitted between the ages of fourteen and twenty-one years may remain for a period of seven years, if, in the judgment of the trustees, the character, progress, capacity, and conduct of the pupil in each case justify so long a pupilage.

HISTORY.—R. S. § 666; 75 v. 150, § 14; S. & S. 48.

Provision for further and higher education.

SECTION 1885-I. Subject to the approval of the Ohio board of administration, the superintendent may provide for the further and higher education of any pupils who in his judgment are capable of receiving sufficient benefit thereby to render them more efficient as citizens by appointing readers for such persons to read from text-books and pamphlets used in their studies while in attendance as regularly matriculated students in any college, university, technical or professional school located in this state and authorized by law to grant degrees.

HISTORY.—103 v. 474.

Persons received to learn trades, in certain cases may return.

SECTION 1886. Persons over twenty-one years of age may be received for one year, for the purpose of learning a trade or employment taught in the mechanical department. They may also receive instruction in one or more studies, if this can be done without interfering with the purpose for which they are admitted. In addition to the one year specified for those over twenty-one years of age, females over twenty-one years of age may be allowed to remain three years more, if their capacity renders it advisable.

HISTORY.—R. S. § 667; 75 v. 150, § 14; S. & S. 48.

Trustees may terminate course or dismiss pupils.

SECTION 1887. Subject to the approval of the trustees, the superintendent may permit former pupils to return to the institution for a period not exceeding one year, for the purpose of reviewing or perfecting their studies, but not at an age beyond the oldest period provided for in this chapter. Upon the recommendation of the superintendent at any time, for a sufficient cause, the trustees may terminate the course of any pupil, and, subject to the approval of the trustees, he may dismiss any pupil for persistent disobedience, immoral conduct, or other cause, that renders the person unfit to remain in the institution.

HISTORY.—R. S. § 667; 75 v. 150, § 14; S. & S. 48.

SECTION 1888. Pupils, not residents of Ohio, may be admitted if there is accommodation therefor, upon the payment of such sums and upon such terms as the trustees determine. The money received from such pupils shall be paid to the steward, receipted for by him, and certified into the state treasury to the credit of the general revenue fund. The steward must keep a correct record of moneys so received by him in a book prepared for that purpose, which record shall be open for the inspection of any person wishing to examine it.

Non-residents  
admitted.

HISTORY.—R. S. § 668; 75 v. 150, § 14.

SECTION 1889. From appropriations for current expenses, the trustees may expend an amount, not exceeding six hundred dollars, each year, for the purchase of books, maps, and other educational appliance, from the American printing house for the blind, for the use of the institution, and gratuitous distribution among the indigent blind of the state, if the purchases can be made from that printing house at prices not exceeding the cost of their production.

Trustees may  
purchase  
books.

HISTORY.—R. S. § 669; 75 v. 150, § 16.

#### STATE SCHOOL FOR THE DEAF

SECTION 1872. The state school for the deaf shall be open to receive such persons too deaf to be educated in the public schools, residents of the state, as the trustees and superintendent deem, from reliable information and examination, to be suitable persons to receive instruction, according to the methods therein employed. No person shall be received under seven years of age or remain longer than thirteen years. No person addicted to immoral habits or who has a contagious or offensive disease shall be received.

Admission of  
pupils, age  
and time.

HISTORY.—R. S. § 659; 99 v. 598; 92 v. 69; 82 v. 79; 75 v. 507, § 6; S. & S. 43§ S. & C. 182.

SECTION 1873. The state school for the deaf shall also be open to receive such blind and deaf children, residents of the state, as the trustees and superintendent deem to be suitable persons to receive instruction therein. The superintendent may employ suitable teachers, and nurses, and make necessary arrangements for the instruction and care of blind and deaf children admitted.

Admission of  
blind and deaf  
children.

HISTORY.—R. S. § 659-1; 99 v. 598, § 1; 93 v. 75.

SECTION 1874. So far as applicable, the rules and regulations for the admission and education of the deaf shall apply to the blind and deaf, but the trustees may use their discretion as to the age deaf-blind may be received and the time they may remain as pupils.

Rules govern-  
ing admission  
of blind and  
deaf.

HISTORY.—R. S. § 659-1; 99 v. 598, § 1; 93 v. 75.

SECTION 1875. When deemed by them fit and proper, the trustees shall provide for the education of a deaf and blind child at its home, and shall appoint and direct teachers

Education of  
deaf and blind  
children at  
home.



therefor the same as when the child is placed in the institution.

HISTORY.—R. S. § 659-2; 93 v. 75, § 2.

When pupil may be returned to parents or guardian.

SECTION 1876. Pupils admitted into the state school for the deaf may be permitted to remain such portion of thirteen years as their progress justifies. If at any time the trustees and superintendent determine that a child is not making sufficient progress in its school or industrial work to justify its continuance as a pupil, they may return it to its parents, guardian, or the infirmary of the county from which it came. No pupil admitted thereto from a county infirmary or who, after admission becomes a county charge, shall be sent to a county infirmary for the summer vacation.

HISTORY.—R. S. § 660; 99 v. 599; 92 v. 69; 89 v. 313; 82 v. 79; 75 v. 507, § 7; S. & S. 43.

What may be taught such pupils.

SECTION 1877. Shoemaking, printing, book-binding, cutting, fitting and making wearing apparel for females, and such other trades and arts as are found to be adapted to the capacities and wants of the deaf, shall be carried on and taught. The trustees in this behalf shall have regard to the good of the pupils and the economical administration of the school.

HISTORY.—R. S. § 661; 99 v. 599; 89 v. 313; 75 v. 507, § 9; S. & S. 43.

Management of classes.

SECTION 1878. From among the pupils, male and female, the superintendent shall assign such number from time to time as seems proper, organize them into classes, assign to each class such portions of each day as will best harmonize with their ordinary studies, and at the same time give sufficient opportunity to the teachers of trades and arts to attend to their instruction. The superintendent and teachers shall meet and consult monthly, make such change in the classes or order of instruction, and adopt such rules in regard thereto as experience suggests, subject to the approval of the trustees.

HISTORY.—R. S. § 662; 89 v. 313; 77 v. 169; 75 v. 507, § 10; S. & S. 45.

Supervision of classes in trades and arts.

SECTION 1879. The book-binding shall be under the supervision of the supervisor of public printing. The art of cutting, fitting and making wearing-apparel for females shall be under the supervision of the matron, who shall assign to classes in such arts from the female pupils such number, from time to time, as seems proper, arranging their classes, as provided for in the teaching of other arts and trades.

HISTORY.—R. S. § 662; 89 v. 313; 77 v. 169; 75 v. 507, § 10; S. & S. 45.

Binding for the state.

SECTION 1880. As far as practicable, the book-binding for the state shall be done at this institution, and the supervisor of public printing shall have reference to this object in the organization of the business and preparation for work. When the book-binding is let to others, the super-

visor may arrange with the contractors to do any part of the work in addition to the work for the state then let, that can be done at the institution on proper terms. If fair rates can not be had from such contractors to employ the pupils engaged in this department, the supervisor may contract for and perform other binding.

HISTORY.—R. S. § 663; 77 v. 169, 170; 75 v. 507, § 11; S. & S. 45.

SECTION 1881. The supervisor shall, monthly, render an account to the auditor of state of moneys earned by this department, and pay into the state treasury moneys received therefrom. In his annual report, he shall state particularly the capacity of the department with reference to the work required by the state.

Monthly report of supervisor.

HISTORY.—R. S. § 663; 77 v. 169, 170; 75 v. 507, § 11; S. & S. 45.

#### INSTITUTION FOR DEFORMED AND CRIPPLED CHILDREN

SECTION 2073. A commission composed of the governor, auditor of state and three persons resident of the state, to be appointed by the governor, not more than three members of which commission shall belong to one political party, is hereby established, and on behalf of the state is directed to select from lands now owned by the state of Ohio; or, in event no lands suitable for the purpose are available; then, to select and purchase a tract of land, in this state, which tract shall be of such size as the commission deems advisable, and which shall be suitable for the location of a state institution, to be known and designated as the Ohio institution for the treatment and education of deformed and crippled children.

Commission to select site; appointment.

HISTORY.—R. S. § 781-89; 98 v. 57, § 1; 107 v. 146.

SECTION 2074. The commission shall adopt plans and specifications, prepare estimates of cost and construction, accept donations, let contracts for and cause to be constructed on such lands the necessary buildings and structures, at a total cost not to exceed the amount appropriated for that purpose, for the medical and surgical treatment and polytechnic and literary education, of the indigent crippled and deformed children of the state, under the age of eighteen years.

Duties of commission.

HISTORY.—R. S. § 781-89; 98 v. 57, § 1; 107 v. 146.

SECTION 2075. The commission is also directed to purchase and provide all equipments, fixtures, appliances and furnishings for such land, buildings and structures and to make contracts, employ an architect and other agents and employes as it deems proper and necessary to carry into effect the provisions and purposes of this chapter.

Equipment and furnishing of building.

HISTORY.—R. S. § 781-89; 98 v. 57, § 1.

SECTION 2076. The institution is founded for the purpose of caring for, treating and schooling the crippled and deformed children of the state, that they may be aided to

Who may be admitted to the institution.

live in physical comfort and be self-sustaining citizens rather than lifelong charges upon the public. Children admissible to the institution shall be apportioned among the several counties of the state in proportion to population as shown by the next preceding federal census, but each county shall be entitled to at least two enrollments therein at all times.

HISTORY.—R. S. § 781-39; 98 v. 57, § 1.

Deeds of land  
purchased.

SECTION 2077. The deeds of land purchased in pursuance of this chapter shall be executed in the name of the state and recorded in the records of deeds in the county wherein they are situated.

HISTORY.—R. S. § 781-40; 98 v. 58, § 2.

Oath of office.

SECTION 2078. Before entering upon the duties of their office the members of the commission appointed by the governor, shall take and subscribe an oath or affirmation, faithfully to discharge all the duties required of them by this chapter.

HISTORY.—R. S. § 781-41; 98 v. 58, § 3.

Expenses of  
commission.

SECTION 2079. The members of the commission shall be allowed their traveling and other necessary expenses incurred in the discharge of their duties. The accounts of expenditures, including expenses of the commission, when certified to by the president and secretary thereof, shall be audited and allowed by the auditor of state.

HISTORY.—R. S. § 781-42; 98 v. 58, § 4.

Organization  
of commission.

SECTION 2080. The commission shall organize by electing a president and a secretary who shall be members of the commission. The commissioners may make such rules and regulations as they deem proper. A majority of the members shall constitute a quorum for the transaction of business.

HISTORY.—R. S. § 781-43; 98 v. 58, § 5.

Board of  
trustees, ap-  
pointment, etc.

SECTION 2081. When the buildings and structures under the provisions of this chapter are so far completed that in the opinion of the commission they properly may be used for the purpose of such institution, with the advice and consent of the senate, the governor shall appoint a board of trustees therefor to consist of six members, not more than three of whom shall be of the same political party, for one, two, three, four, five and six years, respectively, from the date of their appointment. Thereafter one member shall be appointed each year for a term of six years. Vacancies occurring in the board shall be filled in like manner.

HISTORY.—R. S. § 781-44; 98 v. 58, § 6.



SECTION 2082. The control and management of the institution shall be vested in the board of trustees in accordance with the general provisions of law relating to state benevolent institutions, which provisions so far as applicable shall apply to such board.

Control and  
management  
of institution.

HISTORY.—R. S. § 781-45; 98 v. 59, § 7.

Section 8 of this act, 98 v. 57, appropriated \$50,000 to carry out these provisions.

See, also, G. C. § 1833.

#### DEPARTMENT OF PUBLIC WELFARE

SECTION 1352. The board of state charities shall investigate by correspondence and inspection the system, condition and management of the public and private benevolent and correctional institutions of the state and county, and municipal jails, workhouses, infirmaries and childrens homes as well as all institutions whether incorporated, private, or otherwise, which receive and care for children. Officers in charge of such institutions or responsible for the administration of public funds used for the relief and maintenance of the poor shall furnish the board or its secretary such information as it requires. The board may prescribe such forms of report and registration as it deems necessary. For the purpose of such investigation and to carry out the provisions of this chapter it shall employ such visitors as may be necessary, who shall, in addition to other duties, investigate the care and disposition of children made by institutions for receiving children, and by all institutions including within their objects the placing of children in private homes, and, when they deem it desirable they shall visit such children in such homes, and report the result of such inspection to the board. The members of the board and such of its executive force as it shall designate may attend state and national conferences for the discussion of questions pertinent to their duties. The actual traveling expenses so incurred by the members and such of its executive force as it shall designate shall be paid as provided by section 1351 of the General Code.

Duties of  
the board.

Employment  
of visitors.

Attending na-  
tional con-  
ference.

HISTORY.—R. S. § 656; 98 v. 105; 77 v. 227; 73 v. 165, § 2; S. & S. 51; 103 v. 864 (865); 108 v. Pt. I 46. For analogous sections, see P. & A. Code § 1828, which was 99 v. 349, § 1; P. & A. Code § 1829, which was 99 v. 349, § 2; and P. & A. Code § 1830, which was 99 v. 350, § 3.

May order removal of aged or infirm deaf and dumb from county infirmary to a home for aged and infirm, deaf and dumb persons, see G. C. § 10191.

SECTION 1352-1. Such board shall annually pass upon the fitness of every benevolent or correctional institution, corporation and association, public, semi-public or private as receives, or desires to receive and care for children, or places children in private homes. Annually at such times as the board shall direct, each such institution, corporation or association, shall make a report, showing its condition, management and competency, adequately to care for such children as are, or may be committed to it or admitted therein, the system of visitation employed for children placed in private homes, and such other facts as the board requires.

Annual exam-  
ination of in-  
stitutions;  
certificate.

List of certified institutions furnished juvenile courts.

Penalty.

When the board is satisfied as to the care given such children, and that the requirements of the statutes covering the management of such institutions are being complied with, it shall issue to the association a certificate to that effect, which shall continue in force for one year, unless sooner revoked by the board. No child shall be committed by the juvenile court to an association or institution which has not such certificate unrevoked and received within fifteen months next preceding the commitment. A list of such certified institutions shall be sent by the board of state charities, at least annually, to all courts acting as juvenile courts and to all associations and institutions so approved. Any person who receives children or receives or solicits money on behalf of such an institution, corporation or association, not so certified, or whose certificate has been revoked, shall be guilty of a misdemeanor, and fined not less than \$5.00 nor more than \$500.00.

HISTORY.—103 v. 864 (865).

There is no statutory duty imposed upon the board of state charities to prosecute violation of section 1352-1 G. C. for receiving children or soliciting money on behalf of an institution not having the certificate of the board, enabling it to assume the care of children, but in the nature of the case it is appropriate for the department to enforce the observance of this law and inaugurate prosecution for its violation. Op. Atty. Gen. (1918), p. 359.

Certificate required before filing articles of incorporation.

SECTION 1352-2. No association whose object may embrace the care of dependent, neglected or delinquent children or the placing of such children in private homes shall hereafter be incorporated unless the proposed articles of incorporation shall have been submitted first to the board of state charities. The secretary of state shall not issue a certificate of incorporation unless there shall first be filed in his office the certificate of the board of state charities that it has examined the articles of incorporation, and that in its judgment the incorporators are reputable and respectable persons, and that the proposed work is needed, and the incorporation of such association is desirable and for the public good. Amendments proposed to the articles of incorporation of any such association shall be submitted in like manner to the board of state charities, and the secretary of state shall not record such amendment or issue his certificate therefor unless there shall first be filed in his office the certificate of the board of state charities that it has examined such amendment, that the association in question is, in its judgment, performing in good faith, the work undertaken by it, and that such amendment is, in its judgment, a proper one, and for the public good.

HISTORY.—103 v. 864 (866). P. & A. Ann. G. C. § 1676 was repealed in 103 v. 864 (913), § 2; and re-enacted as G. C. § 1352-2, which was 103 v. 864 (866).

Who may be received as wards; when guardianship transferred to board.

SECTION 1352-3. The board of state charities shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court. County, district, or semi-public children's homes or

any institution entitled to receive children from the juvenile court or the board of administration may, with the consent of the board, transfer to it the guardianship of minor wards of such institutions or board. If such children have been committed to such institutions or to the board of administration by the juvenile court that court must first consent to such transfer. The board shall thereupon ipso facto become vested with the sole and exclusive guardianship of such child or children. The board shall, by its visitors, seek out suitable, permanent homes in private families for such wards; in each case making in advance careful investigation of the character and fitness of such home for the purpose. Such children may then be placed in such investigated homes upon trial, or upon such contract as the board may deem to be for the best interests of the child, or proceedings may be had, as provided by law, for the adoption of the child by suitable persons. The board shall retain the guardianship of a child so placed upon trial or contract during its minority, and may at any time, if it deem it for the best interest of the child, cancel such contract and remove the child from such home. The board, by its visitors, shall visit at least twice a year all the homes in which children have been placed by it. Children for whom on account of some physical or mental defect it is impracticable to find good, free homes may be so placed by the board upon agreement to pay reasonable board therefor. The board shall provide needed clothing and personal necessities for such children. When necessary any children so committed or transferred to the board may be maintained by it in a suitable place until a proper home is found. So far as practicable children shall be placed in homes of the same religious belief as that held by their parents. The traveling expenses in connection with the placing of such children in homes, the amount of board, if any, and expenses for clothing and personal necessities and for mental, dental and optical examination and treatment shall be paid out of funds appropriated to the use of the board by the general assembly.

Homes for  
wards; duties  
of visitors.

Clothing and  
maintenance.

HISTORY.—103 v. 864 (866); 108 v. Pt. II 1158. For analogous sections, see P. & A. Code § 2547, which was R. S. § 976; 93 v. 266; 83 v. 196, 197; 73 v. 233, § 26; 102 v. 433; P. & A. Code § 3101, which was R. S. § 931d; 80 v. 102; and P. & A. Code § 3102, which was R. S. § 931d; 80 v. 102.

In cases where the Board of State Charities transfers its wards to the Soldiers' and Sailors' Orphans' Home, the guardianship of the board, as provided in section 1352-3 G. C., does not cease.

When children are transferred from a county, district or semi-public children's home, or other institution, to the Board of State Charities, there is no provision of law whereby said children may be re-transferred by the Board of State Charities to the district home or other institution from which they came. Op. Atty. Gen. (1918), p. 1249.

SECTION 1352-4. The actual traveling expenses of any dependent, neglected, crippled or delinquent child and of the agents and visitors of said board shall be paid from funds appropriated to said board, but the amount of board, if any, paid for the care of such child and the expense for

What travel-  
ing expenses  
paid by  
county.



providing suitable clothing and personal necessities, mental, medical, surgical, dental and optical examination and treatment, including massaging and other beneficial treatment and braces, artificial limbs and accessories and their upkeep and for the education when necessary of a crippled child, shall be charged by the board of state charities to the county from which such child was committed or transferred as provided in sections 1352-3, 1352-5 and 1352-8. The treasurer of each county, upon the warrant of the county auditor, shall pay to the treasurer of state the amount so charged upon the presentation of a statement thereof. The sum so received by the treasurer of state shall be credited to the fund appropriated for the purpose of maintaining the child placing work of the board.

HISTORY.—103 v. 864 (867); 106 v. 500 (502); 108 v. Pt. II 1158; 109 v. 362.

See Opinions of Attorney General No. 2900, p. (1922), cited under Sec. 1672.

When delinquent children may be received as wards; commitment.

SECTION 1352-5. The board of state charities may when willing to do so, receive as its wards with all the powers given it by section 1352-3 of the General Code delinquent children committed to it by a juvenile court or from any institution to which such children may be committed by the juvenile court or assigned by the board of administration. Such children shall be placed by it in homes in accordance with the provisions of section 1352-3 of the General Code. Before making such commitment the court may make an order that the parent or parents of such child shall pay the board of state charities, periodically, reasonable sums for the maintenance of such child, which orders, upon the disobedience thereof, may be enforced by attachment as for contempt. If originally committed to such institution by the juvenile court, the court must first consent to the transfer of such child to the board of state charities. Said court may in such cases make an order that the parents or guardians pay for its maintenance in the same manner as if such child had been originally committed to said board.

Provided that if the board of state charities find it impracticable to so place such child, it shall at its discretion have the right to surrender such child to the court, institution or board of administration from which it was received.

HISTORY.—103 v. 864 (867); 108 v. Pt. II 1158 (1159).

See Opinions of Attorney General (1919), p. 673, cited under Sec. 1642.

What "institution" and "association" shall include.

SECTION 1352-6. For the purpose of this chapter the words "institution" and "association" shall include any incorporated or unincorporated organization, society, association or agency, public or private, which may receive or care for children; any individual who, for hire, gain, or reward, receives or cares for children, unless he is related to them by blood or marriage; and also any individual not in the regular employ of a court, or of an institution or associa-

tion certified in accordance with section 1352-1, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage, or is the duly appointed guardian thereof.

HISTORY.—108 v. Pt. I 140; 108 v. Pt. II 1167.

SECTION 1352-7. Whenever the board of state charities receives moneys for board from an individual liable therefor under sections 1352-5 and 1653 of the General Code the same shall be paid to the treasurer of state and credited to the fund appropriated for the purpose of maintaining the child placing work of the board.

Credit of moneys paid.

HISTORY.—106 v. 500 (503); 108 v. Pt. II 1158 (1159).

SECTION 1352-8. In order to provide suitable medical and surgical treatment, and education when necessary, of crippled children whose parents or guardians fail or are financially unable to provide such treatment, the board of state charities is authorized and empowered to receive into its custody such children. Application for such care, treatment, and education, shall first be made to the juvenile court by a parent, guardian or some interested person. If such court is of the opinion that such child is in need of treatment and education, and finds that the parent or guardian fails to provide it, he may make an order to that end; or if the parent or guardian is financially unable to pay all or a part of the expense of such treatment, the court shall make a proper finding and decree. In either case the court shall at once forward a copy of the decree and a statement of facts to the board of state charities, and such board shall, when able to do so under this act, accept such child for care as hereinbefore provided. Upon receipt of notice from such board that such child can be given suitable treatment the court shall then commit such child to such board and provide for its conveyance in charge of a suitable person to the place designated by such board for treatment. The expenses for conveyance shall be paid by the county or by the parent or guardian as the court may direct. Such commitment shall be temporary and shall be only for the period necessary for the treatment of such child.

When board shall provide treatment for crippled children; application to juvenile court; copy of decree; notice to court.

HISTORY.—108 v. Pt. I 184; 109 v. 362.

SECTION 1352-9. The board of state charities shall arrange for the treatment and education of crippled children committed to it by the juvenile court. The expenses for board, clothing and personal necessities and for mental, medical, surgical, dental, and optical examination and treatment, including massaging and other beneficial treatment and braces, artificial limbs and accessories and their upkeep, and for education when necessary shall be paid out of funds appropriated to the use of the board of state charities by the general assembly; but the board of state charities may

Expenses of keep and treatment; how paid.

Supervision of children by board; visits, reports.

require parents or guardians to pay the state for such expenses when in its judgment such action is just. Such board shall exercise close supervision over such crippled children while patients in such hospitals and may at any time terminate any contracts so made when in its judgment such action should be taken. Each child shall be visited as frequently as necessary and proper by a representative of such board who shall prepare and present to the board a written report concerning the progress of such patient.

HISTORY.—108 v. Pt. 1; 134 (135); 109 v. 362.

When child may be discharged or released.

SECTION 1352-10. Whenever it appears that a crippled child has been successfully treated, or that it cannot be further benefited by such treatment, the board shall order its discharge and thereupon its guardianship and responsibility shall cease. After such child has been in the care of the board of state charities in accordance with this act for more than one year the parent or guardian, with the approval of the juvenile court, may cause its release from the supervision of the board of state charities.

HISTORY.—108 v. Pt. I 134 (135); 109 v. 362.

When contracts of board may be terminated.

SECTION 1352-11. After the Ohio institution for the treatment and education of deformed and crippled children is established and ready for the treatment of such children the board of state charities may terminate all contracts made under this act [G. C. §§ 1352-8 to 1352-11] and transfer such children under its care to such institution, unless such institution cannot care for all such children who are eligible for admission.

HISTORY.—108 v. Pt. I 134 (136).

#### INSTITUTIONS FOR THE FEEBLE MINDED

Government and control of institutions for feeble-minded under Ohio board of administration.

SECTION 1891. The Ohio board of administration, hereinafter designated as the board of administration or the board, shall manage and govern the institutions for the feeble-minded and shall have full power and authority hereafter to establish, manage, govern and maintain additional institutions for the feeble-minded whenever the necessary funds therefor have been appropriated by the general assembly and are available for such purpose. The board of administration shall have the power and authority, also, to provide for the custody, supervision, control, care, maintenance and training of feeble-minded persons committed to its custody and care, and to pay, in the manner provided by law, the expense thereof out of any funds available therefor.

HISTORY.—R. S. § 671; 75 v. 541, § 5; 106 v. 5; 108 v. Pt. I 552.



SECTION 1892. The object of the institutions for the feeble-minded shall be to receive, detain, care for and maintain feeble-minded persons committed to the custody and care of the board of administration and to train and educate such of them received as are capable of being trained and educated, so as to render them more comfortable, happy and less burdensome to society. The inmates of the institution shall be furnished such agricultural and mechanical education as they are capable of receiving and as the facilities furnished by the state will allow. Such other training as the board and the superintendent deem necessary and useful for the welfare of the inmates, and as tending to their proper employment, or as contributing to their development, discipline and support, from time to time, may be added.

Object and purpose of institutions; education and training.

HISTORY.—R. S. § 672; 75 v. 541, § 6; 108 v. Pt. I 552.

SECTION 1893. Feeble-minded persons of any age, whether public charges or not, shall be admitted to the institutions for the feeble-minded, provided such persons are of such inoffensive habits as to make them, in the judgment of the board of administration, proper subjects for care and discipline. Such persons shall be committed to the board of administration and admitted to the institutions for the feeble-minded in the same manner and by like proceedings as are provided for the commitment and admission of insane persons to the state hospitals for the insane; and the provisions of chapter 7, division II, title V, part first of the General Code governing and regulating the admission and commitment to, and conveyance and escort to and from the state hospitals for the insane, the clothing, traveling expenses, care and maintenance of persons adjudged insane, the arrest and return of escaped insane patients, the release of insane patients from the hospitals for the insane on *habeas corpus*, and the record of inquests of lunacy to be made and kept by the probate judge, shall apply to and govern the commitment, custody, care, support, maintenance and release of the feeble-minded, and the same fees, costs and expenses that are allowed and paid in lunacy cases shall be allowed, taxed and paid for similar services in all proceedings related to feeble-minded persons. Provided, however, that the medical certificates mentioned in section 1957 of the General Code shall not, when the same relate to feeble-minded persons, be void after ten days, as stated in said section. When they relate to feeble-minded persons, said certificates shall be valid for an indefinite period.

Who may be admitted; procedure in admission or release; fees, costs, etc.

HISTORY.—R. S. § 673; 75 v. 541, § 7; 108 v. Pt. I 552 (553).

SECTION 1894. In the reception of feeble-minded persons into the institutions for the feeble-minded, preference and priority, so far as practicable shall be given to feeble-minded children who are delinquent or dependent, as defined in sections 1644 and 1645, respectively, of the General Code. No prior or separate proceedings under the juvenile court act as provided in chapter 8, title IV, part first of the Gen-

What children given preference.

eral Code shall be necessary, however, to the institution of proceedings and commitment to the board of administration for admission to the institutions for the feeble-minded, of a delinquent or dependent feeble-minded child under the age of eighteen years.

HISTORY.—R. S. § 674; 75 v. 541, § 8; 108 v. Pt. I 552 (553).

Disposition of feeble-minded when board unable to provide care and custody.

SECTION 1895. If by reason of the incapacity of the institutions for the feeble-minded to receive additional inmates, the board of administration is unable to provide for the custody and care of any feeble-minded person, said board shall forthwith notify the judge of the probate court in which the proceedings for the commitment of such feeble-minded person are pending, of its inability to receive such feeble-minded person. The probate judge shall thereupon take such action and make such order as he may deem necessary and advisable to provide for the detention, supervision, care and maintenance of said feeble-minded person until such time as he may be received in an institution for the feeble-minded.

HISTORY.—R. S. § 674a; 93 v. 209, § 1; 108 v. Pt. I 552 (553).

Additional institution for feeble-minded; location by Ohio board of administration.

SECTION 1904-1. In addition to the institution for feeble-minded, an additional institution of the state for the custody, supervision, control, care, maintenance and training of feeble-minded persons committed to the custody and care of the Ohio board of administration shall be established and located, in the northern or in the southern part of the state, at such point as the Ohio board of administration may determine to be most suitable therefor and best adapted to the public convenience and welfare, having regard to the location of the present institution for feeble-minded, the centers of population in the northern and southern parts of the state, respectively, the availability of land suitable for such institution, and due economy in the acquisition of desirable site, provided, however, that nothing herein contained shall prevent the Ohio board of administration in its discretion from receiving in any of the institutions for feeble-minded, feeble-minded persons committed to its custody and care from any county in the state.

HISTORY.—108 v. Pt. I 430, § 1.

Acquisition of land and construction of buildings authorized.

SECTION 1904-2 The Ohio board of administration shall proceed forthwith to acquire by purchase, gift, lease, or appropriation the necessary real estate for the said institution and thereon to establish, construct, furnish and equip such building or buildings and such other improvements and facilities as it may deem necessary and proper for the custody and care of the feeble-minded. In the procuring of plans and specifications and in the letting of contracts for the construction, equipment and furnishing of said building or buildings and of the said improvements and facilities, as well as in the supervision of the construction, equipment and furnishing of the same and in the disbursement of the

funds hereinafter appropriated therefor, the Ohio board of administration shall observe and be governed by all and singular the provisions of law relative and pertinent to the purchase and acquisition of land, the construction, equipment and furnishing of such building or buildings, and the disbursement of funds therefor by said board; provided, however, that the Ohio board of administration with the unanimous approval of the state building commission and whenever said commission may deem it more economical so to do, may construct, in whole or in part, any of such buildings or other improvements, and may purchase or furnish such materials, supplies, and labor for the construction, equipment, and furnishing of said buildings, improvements, and facilities as it may deem necessary or advisable, in which event the provisions of section 2314 to 2330 of the General Code, both inclusive, shall not apply.

HISTORY.—108 v. Pt. I 430, § 2.

SECTION 1904-3. The sum of six hundred and fifty thousand dollars is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund, not otherwise appropriated, to be used and disbursed by said Ohio board of administration for the purchase of land for the site of said additional institution for the feeble-minded, the making of the necessary improvements thereon, and the construction, equipment and furnishing of such suitable building or buildings as the Ohio board of administration may find necessary.

Appropriation.

HISTORY.—108 v. Pt. I 430 (431), § 3.

#### BOYS' INDUSTRIAL SCHOOL

SECTION 2083. The boys' industrial school, situated in the county of Fairfield, shall be maintained for the industrial and intellectual training of those admitted to its care. All youths committed thereto by the courts shall be committed until twenty-one years of age, unless sooner released by the school for satisfactory behavior and progress in training. The power to receive and discharge students and regulate their training and instruction shall be vested exclusively in the controlling administration department and the school shall be subject to such inspection as may be provided by law.

Boys' industrial school; commitment; discharge.

HISTORY.—R. S. §§ 752, 764a; 93 v. 311; 83 v. 6; 82 v. 64; 75 v. 60, § 7; 82 v. 141; 109 v. 523.

SECTION 2084. Male youth, not over eighteen nor under ten years of age having normal mental and physical capacity for intellectual and industrial training may be committed to the boys' industrial school by the juvenile courts upon a finding of delinquency as designated by the laws for juveniles. No youth having a contagious or infectious disease shall be so committed.

Admission of youths to school.

HISTORY.—S. & S. 388; R. S. § 753; 62 v. 30; 75 v. 60, § 8; 78 v. 167; 83 v. 6, 7; 103 v. 864 (879); 109 v. 523.  
The amendment in 103 v. 864 (879) in effect July 1, 1914.



What youths  
may be ad-  
mitted to the  
boys' industrial  
training school.

SECTION 2084-1. Male youth, not over eighteen nor under ten years of age, having normal, mental and physical capacity for intellectual and industrial training may be admitted to the boys' industrial training school under such regulation governing tuition, maintenance and discipline as the controlling board may provide. Funds collected for the maintenance of youth so admitted shall be turned into the state treasury for the use of the school.

HISTORY.—109 v. 523.

Child com-  
mitted under  
sole control  
of school.

SECTION 2084-2. When a child has been received by the boys' industrial school under the provisions of this or other chapters on commitment by a juvenile court, or by transfer or assignment by the board, sole control of said child shall be in the school and the power and jurisdiction of the court shall cease.

HISTORY.—109 v. 523.

Leave of ab-  
sence of in-  
mates.

SECTION 2091. The board shall establish rules and regulations under which inmates of the school may be allowed to go upon leave of absence until finally discharged. No inmate shall be given leave of absence, discharged or transferred from the school except upon the written recommendation of the superintendent. The board shall designate the number of field officers who may be employed to establish proper supervision over inmates on leave of absence.

HISTORY.—R. S. § 757b; 97 v. 23; 103 v. 864 (880); 109 v. 523.

Education of  
inmates in  
boys' indus-  
trial school.

SECTION 2094. The inmates of the school shall receive such education, and be instructed in such branches of industry, agricultural or mechanical, or otherwise, as the board determines, their reformation and preparation for usefulness being kept in view in the administration of the institution. For this purpose the board may introduce and carry on any branches of industry that are thought to be conducive to these ends.

HISTORY.—R. S. § 760; 83 v. 6, 7; 75 v. 60, § 15.

#### GIRLS' INDUSTRIAL SCHOOL

Object of the  
school.

SECTION 2101. The girls' industrial school shall be for the instruction, employment and reformation of evil-disposed, incorrigible, and vicious girls.

HISTORY.—R. S. § 765; 75 v. 144, § 1; 103 v. 864 (881).

General charge  
of girls.

SECTION 2103. With such subordinate officers as the chief matron shall appoint, the chief matron shall have the general charge and custody of the girls. She shall be a constant resident at the school, and under the direction of the Ohio board of administration, shall discipline, govern, instruct, employ, and use her best endeavors to reform the girls in such manner as, while preserving their health, and

promoting the proper development of their physical system, will secure, as far as possible, the formation of moral and industrial habits, and regular thorough progress and improvement in their studies, trades and employments.

HISTORY.—R. S. § 779; 75 v. 144, § 16; 103 v. 864 (881).

SECTION 2103-2. Subject to the approval of the board, the chief matron of the girls' industrial school shall appoint a capable and experienced woman physician who shall reside at the school. She shall give the necessary medical attention to the inmates and also have charge of their instruction in physiology, hygiene and physical culture. The board shall fix the salary which shall not be less than twelve hundred nor more than eighteen hundred dollars per year.

Woman physician for school.

HISTORY.—102 v. 307, § 1; 103 v. 864 (881).

SECTION 2106. In addition to the school for instruction, the board shall institute and maintain, at such school a technical industrial school in which the inmates shall be taught the various lines of manual skill of such character as to prepare them to perform the skilled labor required to fit them for self-support when released therefrom. Such school shall be maintained at least ten months each year, and be under the direction and management of a competent principal and a trained corps of teachers. The principal must be a graduate of Pratt's institute or some technical and industrial school, or college, of equal rank and standing, and be versed in the principles of manual, industrial and technical training.

Technical industrial school.

HISTORY.—R. S. § 781a; 98 v. 182, § 1; 103 v. 864 (882).

SECTION 2111. A girl under the age of eighteen years sentenced to imprisonment in the penitentiary, county jail or other penal institution, at any time after such sentence and before the expiration thereof, may be transferred to the girls' industrial school, on the written order of the Ohio board of administration, to serve the unexpired part of the sentence. Such transfer shall be made, if it shall be made to appear that it will be conducive to her reformation, and not prejudicial to the school. The chief matron of the school shall receive such girl so transferred, and if she finds at any time that the best interest of the school requires a return of such girl to the penal institution from which she came, she may so recommend to the board, which is empowered to order the return of such girl.

Board may transfer female convict to the school.

HISTORY.—R. S. § 772; 67 v. 24, § 1; 94 v. 114; 103 v. 864 (882).

SECTION 2112. A girl, duly committed to the school shall be kept there, disciplined, instructed, employed and governed under the direction of the board, until she is either thought to be reformed or discharged, or bound out by the chief matron according to the by-laws of the institution, or has attained the age of twenty-one. Provided that the board may discharge a girl as a reward of merit three months

Detention and discharge.

before she attains the age of twenty-one years. With the approval of the governor, after a full statement of the cause, the board may discharge and return to the parents, guardian, or juvenile court of the county from which she was committed, who may place her under the care of the infirmary superintendent of the county, any girl whom the board thinks ought to be removed from the school. In such case it shall enter upon its record the reason for her discharge, a copy of which, signed by the secretary, shall be forthwith transmitted to the juvenile court of the county from which the girl was committed.

HISTORY.—R. S. § 773; 75 v. 144, § 10; 79 v. 84; 86 v. 180; 91 v. 102; 97 v. 259; 103 v. 864 (882).

Proceedings  
when girl  
under eighteen.

SECTION 2115. When a girl between nine and eighteen years of age is brought before a court of criminal jurisdiction, charged with an offense, punishable by a fine or imprisonment other than imprisonment for life and who, if found guilty, would be a proper subject for commitment to the school, the court, by warrant or order, shall cause her forthwith to be taken before the judge of the juvenile court of the proper county, and shall transmit to him the complaint, indictment, or warrant, by virtue of which she was arrested. Such judge of the juvenile court shall proceed in the same manner as if she had been brought before him upon original complaint.

HISTORY.—R. S. § 774; 75 v. 144, § 11; 94 v. 114; 103 v. 864 (883).

#### BUREAU OF JUVENILE RESEARCH

What minors  
considered  
wards of the  
state.

SECTION 1841-I. All minors who in the judgment of the juvenile court, require state institutional care and guardianship shall be wards of the state, and shall be committed to the care and custody of "The Ohio board of administration," which board thereupon becomes vested with the sole and exclusive guardianship of such minors.

Guardianship  
of.

HISTORY.—103 v. 175. The same General Code section number (§ 1841-1), was given by the legislature to 103 v. 175, and by the attorney general to 103 v. 681, § 1. The section number given by the legislature has been retained and the number of the other section has been changed to G. C. [§ 1841-8].

"Bureau of  
juvenile re-  
search."

SECTION 1841-2. The "The Ohio board of administration" shall provide and maintain a "bureau of juvenile research," and shall employ competent persons to have charge of such bureau and to conduct investigations.

HISTORY.—103 v. 175. The same General Code section number (§ 1841-2), was given by the legislature to 103 v. 175, and by the attorney general to 103 v. 681, § 2. The section number given by the legislature has been retained and the number of the other section has been changed to G. C. [§ 1841-9].

Board may as-  
sign children  
to bureau for  
examination  
and treatment.

SECTION 1841-3. The "The Ohio board of administration" may assign the children committed to its guardianship to the "bureau of juvenile research" for the purpose of mental, physical and other examination, inquiry or treatment for such period of time as such board may deem necessary. Such board may cause any minor in its custody to be



removed thereto for observation and a complete report of every such observation shall be made in writing and shall include a record of observation, treatment, medical history, and a recommendation for future treatment, custody and maintenance. The "The Ohio board of administration" or its duly authorized representatives shall then assign the child to a suitable state institution or place it in a family under such rules and regulations as may be adopted.

Report.

Assignment  
of child.

HISTORY.—103 v. 175. The same General Code section number (§ 1841-3), was given by the legislature to 103 v. 175, and by the attorney general to 103 v. 681, § 3. The section number given by the legislature has been retained and the number of the other section has been changed to G. C. [§ 1841-10].

Where the juvenile court commits a dependent or delinquent child to the care and custody of the department of public welfare and said department assigns said child to the bureau of juvenile research for the purpose of mental or physical examination, the director of public welfare may then assign and transfer such child from said bureau of juvenile research to the division in the department of public welfare known as the division of charities, and no consent on the part of said division of charities, as such, is necessary to such assignment or transfer.

Likewise held that the consent of the juvenile court to such assignment or transfer is also unnecessary. Op. Atty. Gen. No. 2996, Apr. 15, 1922.

SECTION 1841-4. Any minor having been committed to any state institution may be transferred by such "The Ohio board of administration" to any other state institution, whenever it shall appear that such minor by reason of its delinquency, neglect, insanity, dependency, epilepsy, feeble-mindedness, or crippled condition or deformity, ought to be in another institution. Such board before making transfer shall make a minute of the order for such transfer and the reason therefor upon its record, and shall send a certified copy at least seven days prior to such transfer, to the person shown by its records to have had the care or custody of such minor immediately prior to its commitment; provided, that, except as otherwise provided by law, no person shall be transferred from a benevolent to a penal institution.

Power of  
board to trans-  
fer minor  
from one in-  
stitution to  
another.Record and  
reasons there-  
for.

HISTORY.—103 v. 175 (176). The same General Code section number (§ 1841-4), was given by the legislature to 103 v. 175, and by the attorney general to 103 v. 681, § 4. The section number given by the legislature has been retained and the number of the other section has been changed to G. C. [§ 1841-11].

SECTION 1841-5. The "The Ohio board of administration" may receive any minor for observation from any public institution other than a state institution, or from any private charitable institution or person having legal custody thereof, upon such terms as such board may deem proper.

Board may re-  
ceive minor  
for observa-  
tion.

HISTORY.—103 v. 175 (176). The same General Code section number (§ 1841-5), was given by the legislature to 103 v. 175, and by the attorney general to 103 v. 681, § 5. The section number given by the legislature has been retained and the number of the other section has been changed to G. C. [§ 1841-12].

SECTION 1841-6. Each county shall bear all the expenses incident to the transportation of each child from such county to such "bureau of juvenile research," together with

Expenses, fees  
and costs.

such fees and costs as are allowed by law in similar cases, which fees, costs and expenses shall be paid from the county treasury upon itemized vouchers certified to by the judge of the juvenile court.

HISTORY.—103 v. 175 (176).

[Time of taking effect.]

SECTION 1841-7. The provisions of this act [G. C. §§ 1841-1 to 1841-6] shall become valid on and after the first day of July, 1914.

HISTORY.—103 v. 175 (176).

#### OHIO PENITENTIARY

Establishment of day school at penitentiary.

SECTION 2195. The Ohio board of administration may establish, at the penitentiary, an elementary day school for uneducated prisoners, and cause the same to be so conducted as to afford to such prisoners, so far as practicable, the advantages of a common school education. To that end it may employ a competent and efficient superintendent of the school and such number of assistants and teachers as, in its opinion, may be deemed necessary. The board may provide school rooms and necessary furniture, books, stationery, supplies and apparatus.

HISTORY.—103 v. 273, § 1. This section is not analogous to original G. C. § 2195, which was R. S. § 7402; 73 v. 36, 37, §§ 7, 14; S. & S. 515; and which was repealed in 102 v. 211, § 41.

Branches taught.

SECTION 2195-1. The branches of education which shall be taught in such school shall be reading, spelling, writing, arithmetic and English grammar.

HISTORY.—103 v. 273 (274), § 2.

Optional branches or departments.

SECTION 2195-2. The board may establish and maintain manual training, domestic science and commercial departments. The nature of alcoholic drinks and other narcotics, and their effects on the human system, may be included in the branches to be regularly taught, and instruction and training may be given in such other branches as may, from time to time, be directed by the board.

HISTORY.—103 v. 273 (274), § 3.

Designation of attendants and graded course of study.

SECTION 2195-3. The superintendent, having regard to previous education and intellectual capacity, shall designate the prisoners who shall attend such school. He shall prescribe a graded course of study in branches named in section two, and classify and regulate, and prescribe tests for the promotion of prisoners according to attainments from one grade to another. He shall assist and direct the teachers in the performance of their duties and perform such other functions as the board may determine; and he shall, with the approval of the board, prescribe rules and regulations for the management and government of the school.

HISTORY.—103 v. 273 (274), § 4.

SECTION 2195-4. Examinations may be held for promotion and the questions for examination for such promotion shall be uniform and prepared under the direction of the superintendent. Only such prisoners as receive, on examination, an average grade of seventy per centum, with no grade less than fifty per centum, in any branch, shall be passed.

Examination  
and promo-  
tion.

HISTORY.—103 v. 273 (274), § 5.

SECTION 2195-5. Such school [shall] be held not less than two hours each day, Sundays excepted. A school week shall consist of six days and a school month of four school weeks. A course of study shall consist of not less than four recitations a week, continued for a period of forty weeks. The school shall be classified into such number of grades as the superintendent shall prescribe.

School week;  
school month;  
course of  
study.

HISTORY.—103 v. 273 (274), § 6.

SECTION 2195-6. A prisoner, other than one sentenced for life, attending such school, shall be entitled to one month diminution of his sentence for each advancement in grade, which diminution shall not be forfeited or taken away because of a violation of any rule of discipline or for any other cause. The record in the school of a prisoner sentenced for life shall be given special consideration in an application for pardon, parole or commutation of sentence.

Diminution of  
sentence for  
advancement  
in grades.

HISTORY.—103 v. 273 (274), § 7.

SECTION 2195-7. Educated prisoners may be assigned to duty as teachers in such school. The board of administration shall adopt rules for the diminution of the sentence of such teachers, and the time so gained under such rules shall not be forfeited or taken away for any cause.

Prisoners may  
be assigned  
as teachers.

HISTORY.—103 v. 273 (274), § 8.

SECTION 2195-8. The superintendent shall make monthly reports to the board of administration with respect to the management and progress of the school and as to all matters under his supervision.

Monthly re-  
ports.

HISTORY.—103 v. 273 (275), § 9.



## CHAPTER 34

### OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME

#### SECTION.

- 1931. Ohio soldiers' and sailors' orphans' home.
- 1931-1. Providing board of trustees for O. S. and S. O. home.
- 1932. What children may be admitted to the home.
- 1932-1. Admission of children of members of O. N. G.
- 1933. How long may remain at the home.
- 1934. Apportionment admitted from each county.
- 1935. Clerk; appointment, bond.
- 1936. What schools shall be established.
- 1937. Curriculum of studies.
- 1938. The institution to be made a model school.

#### SECTION.

- 1939. Purchase of books, tools, etc.; disposition of products.
- 1940. Pupils may select trade or occupation.
- 1941. Duties of superintendent as to certain pupils.
- 1942. Monthly report of superintendent.
- 1943. Information as to discharged pupils.
- 1944. Trustees may place inmate in private family.
- 1945. Support of children entitled to admission outside of institution.
- 1946. Salaries of officers and employes.
- 1946-3. Superintendent, guardian of the estate of minors.
- 1946-4. Additional bond of superintendent.

Ohio soldiers' and sailors' orphans' home.

SECTION 1931. There shall be an institution under the name of "The Ohio Soldiers' and Sailors' Orphans' Home," which shall be a place for the care and education of children of deceased and disabled soldiers and sailors.

HISTORY.—R. S. § 676; 94 v. 88; 91 v. 217; 84 v. 40; 76 v. 171, § 3.

Children of soldiers and sailors of the present war may be admitted into the home upon the same conditions as the children of soldiers and sailors of the civil war or the Spanish-American war. Op. Atty. Gen. (1918), p. 489.

Board of trustees Ohio Soldiers' and Sailor's Orphan Home; appointment, term, vacancy; Powers and duties.

SECTION 1931-1. There shall be a board known as the Board of Trustees of the Ohio Soldiers' and Sailors' Orphans' Home, who shall have charge and custody of the Ohio Soldiers' and Sailors' Orphans' Home at Xenia, Ohio, which said board shall consist of five members. The governor, with the advice and consent of the senate shall appoint the members of such board upon the passage of this act; one for five years, one for four years, one for three years, one for two years, one for one year, and thereafter each year the governor, with the advice and consent of the senate, shall appoint, for the Ohio Soldiers' and Sailors' Orphans' Home at Xenia, Ohio, one trustee, who shall serve for a term of five years from the ensuing first Monday in April. A vacancy in the office of trustee occasioned by expiration of term, removal or otherwise shall be filled in the same manner as the original appointment, and shall be for the remainder of the term. At any time the governor may remove any trustee with the advice and consent of the senate. During the recess of the senate he may suspend any trustee but shall report his action to the senate at its next session, and, if the senate so advise and consent, such trustee shall be removed, but otherwise he shall be restored to his office. The governor shall designate a person to perform the duties of the suspended trustee during such suspension. The nomination by the governor and confirmation by the senate of a person to take the place of a trustee in office, shall be a removal of such trustee.

Such board shall govern, conduct and care for such home, the property thereof and the inmates therein as provided in the laws governing "The Ohio Board of Administration" so far as the provisions thereof are not inapplicable and are not inconsistent with the provisions of the laws governing such home.

Three members of such board shall constitute a quorum but any two may approve accounts for the payment of current expenses, salaries and open contracts previously entered into by the board.

All supplies for such home shall be purchased as provided in section one thousand eight hundred forty-nine of the General Code.

HISTORY.—103 v. 159, § 1; 109 v. 128.

SECTION 1932. Under such rules and regulations as they adopt, the trustees shall receive into the home the children and orphans, destitute of means of support and education and residing in Ohio, of soldiers and sailors who died by reason of wounds received or disease contracted while serving in the military or naval forces of the United States, and the children of permanently disabled or indigent soldiers and sailors in like manner destitute.

What children may be admitted to the home.

HISTORY.—R. S. § 676; 94 v. 88; 91 v. 217; 84 v. 40; 76 v. 171, § 3.

See Opinions of Attorney General (1918), p. 489, cited under Sec. 1931.

SECTION 1932-1 That the board of trustees of the Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio, are hereby authorized and directed to receive into such home the children of all members of the Ohio National Guard whose lives were lost, or who were permanently disabled at any time in the course of active duty in the service of the state, on the same basis and subject to the same laws as other children are admitted to such institution.

Admission of children of members of O. N. G.

HISTORY.—106 v. 435. For a prior analogous statute, see 103 v. 665, § 1, to which no General Code section number was given, either by the legislature or by the attorney general; and which is probably repealed by implication by G. C. § 1932-1, which was 106 v. 435.

See Opinions of Attorney General (1918), p. 489, cited under Sec. 1931.

SECTION 1933. Unless for good cause sooner discharged, all children admitted to the home shall be supported and educated until sixteen years of age. The trustees may retain such children until they arrive at the age of eighteen years, and members of a graduating class may be retained until the close of the school year.

How long may remain at the home.

HISTORY.—R. S. § 676; 94 v. 88; 91 v. 217; 84 v. 40; 76 v. 171, § 3.

See Opinions of Attorney General (1918), p. 1249, cited under Sec. 1352-3.

SECTION 1934. In the admission of children, each county shall be entitled to its proportion, according to population, of the entire number the home accommodates, and no

Apportionment admitted from each county.

more, unless other counties fail to apply within a reasonable time for the admission of their respective quotas.

HISTORY.—R. S. § 677; 76 v. 171, § 4.

Appointment  
of clerk.

SECTION 1935. On the nomination of the superintendent, the board of trustees of the home shall appoint a clerk for the institution who shall hold his office at the pleasure of the board. The duties of the clerk shall be prescribed by the trustees. Before entering upon his duties, the clerk shall give a bond to the state in the sum of five thousand dollars with two or more sureties, approved by the attorney general, conditioned for the faithful performance of the duties of his office. Such bond with the approval of the attorney general, and the oath of office indorsed thereon, shall be filed in the office of the secretary of state.

HISTORY.—R. S. § 692; 76 v. 171, § 18; 103 v. 528 (533).

What schools  
shall be  
established.

SECTION 1936. The trustees shall establish schools for such literary, technical, industrial, art or other education of all pupils therein as is practicable, and make necessary arrangements therefor. Within the ground of the home, they may establish and maintain shops wherein suitable trades may be taught and practiced in a thorough and comprehensive manner. Subject to their regulations, the superintendent may employ proper teachers, and, for cause, dismiss them.

HISTORY.—R. S. § 678; 76 v. 171, § 5.

The powers conferred by this and the following sections are essentially necessary to accomplish the objects for which this institution was established: Neil v. Trustees, 31 O. S. 15.

Curriculum of  
studies.

SECTION 1937. The curriculum of studies for pupils more than thirteen years of age shall be such as to assist them most effectively in their future pursuits. The division and assignment into schools and classes shall be so arranged that pupils may receive instruction in approved literary branches at the most practicable hours, whether in evening or half-time schools or in schools during certain seasons only.

HISTORY.—R. S. § 696; 76 v. 171, § 23.

The institution  
to be made a  
model school.

SECTION 1938. Any branch of industry introduced shall be taught and practiced in so thorough and comprehensive manner that the institution shall be considered a model school for these particular branches.

HISTORY.—R. S. § 697; 76 v. 171, § 25.

Purchase of  
books, tools,  
etc.; disposi-  
tion of  
products.

SECTION 1939. The trustees, and, under their regulations, the superintendent, may purchase necessary books, materials, tools and machinery, and dispose of the productions of the pupils to the best advantage and account for such proceeds and expenditures in the annual report. The



trustees may make all necessary arrangements to carry into effect the purposes of this chapter.

HISTORY.—R. S. §§ 679, 697; 76 v. 171, §§ 5, 25.

The trustees may pay for a printing press out of an appropriation "for heating and furnishing industrial building": State, ex rel., v. Kiesewetter, 45 O. S. 524.

SECTION 1940. Pupils working inside the institution, on their discharge, shall receive their net earnings for the preceding two years to be approximated by the trustees, and, under their regulations, by the superintendent. Each pupil may select a trade or occupation in which he wishes to engage, but any pupil remaining in the institution after completion of his or her fourteenth year must devote himself or herself for the time remaining to the learning of one of the provided occupations, except in case of debility or ill health.

Pupils may select trade or occupation.

HISTORY.—R. S. § 680; 76 v. 171, § 6.

SECTION 1941. Not less than four years before each pupil arrives at the age of sixteen years, the superintendent of the home shall ascertain what trade, if any, such pupil has learned at the home and what trade or business he or she desires to follow in the future. Thereupon the superintendent shall cause to be published in two newspapers printed and of general circulation in the county from which such pupil came, a notice that the pupil desires a situation in such business, and a home in a respectable family, the compensation to be paid to be such as the employer may agree upon with the pupil and the superintendent. The superintendent shall answer all communications and inquiries relating thereto and keep a record thereof which shall be open to public inspection.

Duties of superintendent as to certain pupils.

HISTORY.—R. S. § 697-1; 81 v. 96, § 1.

SECTION 1942. The superintendent shall keep an account of expenses incurred under the preceding section, and every thirty days submit a full report thereof to the trustees, who shall examine it with all vouchers, and, if found correct, the trustees shall order them paid from the appropriations made by the state for the institution.

Monthly report of superintendent.

HISTORY.—R. S. § 697-2; 81 v. 96, § 2.

SECTION 1943. When pupils are discharged, the trustees through the superintendent, so far as practicable, shall keep in communication with them to enable the trustees to report to the governor and general assembly in regard to these children of the state.

Information concerning discharged pupils.

To that end the trustees or superintendent shall encourage and provide for the holding of annual reunions of the ex-pupils at the home and invite them to attend as the guests of the home and state, and keep a record showing the names, addresses and occupations of those who attend. Such reunions shall be held during the children's regular vacation season, when the holding thereof will not interfere

Holding of annual reunions of ex-pupils.

with the management of the home, and the ex-pupils who attend shall be under the same control and receive the same accommodations as the children and officers of the home.

HISTORY.—R. S. § 680; 76 v. 171, § 6; 106 v. 103.

See Opinions of Attorney General (1918), p. 1249, cited under Sec. 1352-3.

Trustees may place inmate in private family.

SECTION 1944. When, in the opinion of the trustees, the best interests of pupils would be subserved thereby, they may secure homes for them in private families upon such terms as they agree upon, reserving the right to replace them in the home if they deem it for their best interests.

HISTORY.—R. S. § 679; 76 v. 171, § 5.

Support of children entitled to admission outside of institution.

SECTION 1945. The trustees may contract with the proper officers of any of the children's homes authorized by law, in this state, for the support of such children as are by law entitled to admission to the soldiers' and sailors' orphans' home, including those which have become inmates of county infirmaries. In such contracts the trustees shall reserve the right to visit and examine into the condition and treatment of such children in such homes. By such contract, the cost per capita shall not exceed the current expense cost of supporting the children at the soldiers' and sailors' orphans' home. The expenses of their transportation from the infirmaries to the home to which they are assigned shall be paid by the county to which they belong.

HISTORY.—R. S. §§ 697-3, 697-4; 83 v. 173, § 1; 84 v. 174, § 1.

A construction placed upon an act, providing for the support of these children (77 v. 187), was construed by the trustees as requiring an apportionment according to the population of the different counties. A subsequent legislative approval of such construction (78 v. 309), was held to require a fund, which was appropriated by such statute, to be distributed in accordance with such construction: State, ex rel., v. Trustees, 37 O. S. 275.

Compensation of officers and employes.

SECTION 1946. The compensation of the officers and employes of the home shall be fixed by the board of trustees. No person, unless he shall have been in the actual military or naval service of the United States and shall have received an honorable discharge therefrom, shall be eligible to hold the position or office of superintendent. Provided, however, that the provisions of this section shall not affect the tenure of the position or office of the present superintendent.

HISTORY.—R. S. § 695; 76 v. 171, § 22; 78 v. 225; 78 v. 252; 79 v. 121; 82 v. 245; 87 v. 250; 97 v. 99; 104 v. 170; 108 v. Pt. I 617.

Superintendent, guardian of the estate of minors.

SECTION 1946-3. The superintendent of the Ohio Soldiers' and Sailors' Orphans' home shall be, by virtue of his office, the guardian of the estate of all minors under the age of sixteen years, duly admitted and residing in such home, whose fathers are deceased and who have no other legal guardian. The superintendent shall be liable on his official bond for the conduct of the guardianship and shall

not be required to give additional bond. When any minor whose estate is under the guardianship of the superintendent arrives at the age of sixteen years or is discharged from the home, the superintendent shall file his final account as guardian with the probate judge of the county in which the home is situated, and no fees shall be charged by the court for the filing of such account and discharge as guardian. The provisions of law relating to the guardians of minors shall apply as far as possible to the provisions of this section.

HISTORY.—106 v. 497, § 1.

See Opinions of Attorney General (1918), p. 1249, cited under Sec. 1352-3.

SECTION 1946-4. Immediately upon the taking effect of this act the superintendent of said home, now in office, unless a new official bond shall be then given by him, shall give an additional bond in the amount of ten thousand dollars, conditioned upon the faithful discharge of his duties as guardian, under the preceding section, for the term covered by his existing official bond, and nothing in said preceding section shall be deemed or held to apply to or alter the conditions of such existing official bond. Any official bond of said superintendent, given after this act shall take effect, shall be liable as provided in section 1 of this act [G. C. § 1946-3]. The premium on such additional bond, if any, may be paid from any proper appropriation for the current expenses of said home.

Additional  
bond of  
superintendent.

HISTORY.—106 v. 497, § 2.



## CHAPTER 35

### FEDERAL AID LAWS

#### SECTION. SMITH-HUGHES LAW

1. Co-operation with states in teaching certain subjects.
2. Appropriations for teachers, supervisors or directors of agricultural subjects.
3. Appropriation for teachers of trade, home economics and industrial subjects.
4. Appropriations for preparing teachers, supervisors and directors of agricultural subjects.
5. Acceptance by state and co-operation with Federal Board.
6. Creation and powers of Federal Board for vocational education.
7. Appropriation for use of Federal Board.
8. State boards to submit plans and methods of work.
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10. Appropriation for agricultural purposes, how expended.
11. Appropriations for salaries of teachers of trade, home economics and industrial subjects, how expended.
12. Appropriation for training of teachers of trade, home economics and agricultural subjects, how expended.
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#### SECTION.

14. Federal board to certify amounts due each state.
15. Federal board to make deduction from succeeding allotment.
16. Federal board may withhold allotment.
17. Appropriations not to be used for buildings or equipment.
18. Federal board to make annual report to include reports of state boards.

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1. Appropriations to Federal board made available for other uses.

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5. Payments made quarterly to states, reports of State board.
6. Appropriations to Federal board for investigation, etc.
7. Federal board may receive gifts and donations.

#### SMITH-HUGHES LAW

##### (Vocational Education.)

AN ACT to provide for the promotion of vocational education; to provide for cooperation with the States in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the States in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure.

Co-operation with states in teaching certain subjects.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby annually appropriated, out of any money in the Treasury not otherwise appropriated, the sums provided in sections two, three, and four of this act, to be paid to the respective States for the purpose of co-operating with the States in paying the salaries of teachers, supervisors, and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects, and in the preparation of teachers of agricultural, trade, industrial, and home economics subjects; and the sum provided for in section seven for the use of the Federal Board of Vocational Education for the administration of this act and for the purpose of making studies, investigations, and reports to aid in the organization and conduct of vocational education, which sums shall be expended as hereinafter provided.

SECTION 2. That for the purpose of co-operating with the States in paying the salaries of teachers, supervisors, or directors of agricultural subjects there is hereby appropriated for the use of the States, subject to the provisions of this act, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$1,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$1,250,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$1,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$1,750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$2,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$2,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, and annually thereafter, the sum of \$3,000,000. Said sums shall be allotted to the States in the proportion which their rural population bears to the total rural population in the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-three, nor less than \$10,000 for any fiscal year thereafter, and there is hereby appropriated the following sums, or so much thereof as may be necessary, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$48,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$34,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$24,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$18,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$14,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$11,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$9,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$34,000; and annually thereafter the sum of \$27,000.

The state law accepting the provisions of the above act of congress will be found in Section 367-1 to 367-7 of the General Code in chapter 2 of this volume.

SECTION 3. That for the purpose of co-operating with the States in paying the salaries of teachers of trade, home economics, and industrial subjects there is hereby appropriated for the use of the States, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,-

Appropriations for teachers, supervisors or directors of agricultural subjects.

Appropriations for teachers of trade, home economics and industrial subjects.

000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$1,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$1,250,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$1,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$1,750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$2,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$2,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, the sum of \$3,000,000; and annually thereafter the sum of \$3,000,000. Said sums shall be allotted to the States in the proportion which their urban population bears to the total urban population in the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall not be less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-three, nor less than \$10,000 for any fiscal year thereafter, and there is hereby appropriated the following sums, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$66,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$46,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$34,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$28,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$25,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$22,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$19,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$56,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, and annually thereafter, the sum of \$50,000.

That not more than twenty per centum of the money appropriated under this act for the payment of salaries of teachers of trade, home economics, and industrial subjects, for any year, shall be expended for the salaries of teachers of home economics subjects.

SECTION 4. That for the purpose of co-operating with the States in preparing teachers, supervisors, and directors of agricultural subjects and teachers of trade and industrial and home economics subjects there is hereby appropriated for the use of the States for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hun-

Appropriations  
for preparing  
teachers,  
supervisors  
and directors  
of agricultural  
subjects.



dred and nineteen, the sum of \$700,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$900,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, and annually thereafter, the sum of \$1,000,000. Said sums shall be allotted to the States in the proportion which their population bears to the total population of the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and nineteen, nor less than \$10,000 for any fiscal year thereafter. And there is hereby appropriated the following sums, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$46,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$32,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$24,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, and annually thereafter, the sum of \$90,000.

SECTION 5. That in order to secure the benefits of the appropriations provided for in section two, three, and four of this act, any State shall, through the legislative authority thereof, accept the provisions of this act and designate or create a State board, consisting of not less than three members, and having all necessary power to co-operate, as herein provided, with the Federal Board for Vocational Education in the administration of the provisions of this act. The State board of education, or other board having charge of the administration of public education in the State, or any State board having charge of the administration of any kind of vocational education in the State may, if the State so elects, be designated as the State board, for the purpose of this act.

Acceptance by  
state and co-  
operation with  
Federal Board

In any State the legislature of which does not meet in nineteen hundred and seventeen, if the governor of that State, so far as he is authorized to do so, shall accept the provisions of this act and designate or create a State board of not less than three members to act in co-operation with the Federal Board for Vocational Education, the Federal Board shall recognize such local board for the purpose of this act until the legislature of such State meets in due course and has been in session sixty days.

Any State may accept the benefits of any one or more of the respective funds herein appropriated, and it may defer the acceptance of the benefits of any one or more of such funds, and shall be required to meet only the conditions relative to the fund or funds the benefits of which it has accepted: *Provided*, That after June thirtieth, nineteen hundred and twenty, no State shall receive any appropriation for salaries of teachers, supervisors, or directors of ag-

ricultural subjects, until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers, supervisors, or directors of agricultural subjects, as provided for in this act, and that after said date no State shall receive any appropriation for the salaries of teachers of trade, home economics, and industrial subjects until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers of trade, home economics, and industrial subjects, as provided for in this act.

Creation and  
powers of  
Federal Board  
for vocational  
education.

SECTION 6. That a Federal Board for Vocational Education is hereby created, to consist of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the United States Commissioner of Education, and three citizens of the United States to be appointed by the President, by and with the advice and consent of the Senate. One of said three citizens shall be a representative of the manufacturing and commercial interests, one a representative of the agricultural interests, and one a representative of labor. The board shall elect annually one of its members as chairman. In the first instance, one of the citizen members shall be appointed for one year, one for two years, and one for three years, and thereafter for three years each. The members of the board other than the members of the Cabinet and the United States Commissioner of Education shall receive a salary of \$5,000 per annum.

The board shall have power to co-operate with State boards in carrying out the provisions of this act. It shall be the duty of the Federal Board for Vocational Education to make, or cause to have made studies, investigations, and reports, with particular reference to their use in aiding the States in the establishment of vocational schools and classes and in giving instruction in agriculture, trades and industries, commerce and commercial pursuits, and home economics. Such studies, investigations, and reports shall include agriculture and agricultural processes and requirements upon agricultural workers; trades, industries, and apprenticeships, trade and industrial requirements upon industrial workers, and classification of industrial processes and pursuits; commerce and commercial pursuits and requirements upon commercial workers; home management domestic science, and the study of related facts and principles; and problems of administration of vocational schools and of courses of study and instruction in vocational subjects.

When the board deems it advisable such studies, investigations, and reports concerning agriculture, for the purposes of agricultural education, may be made in co-operation with or through the Department of Agriculture; such studies, investigations, and reports concerning trades and industries, for the purpose of trade and industrial education, may be made in co-operation with or through the Department of Labor; such studies, investigations, and reports concerning commerce and commercial pursuits, for the purposes of commercial education, may be made in co-operation

with or through the Department of Commerce; such studies, investigations, and reports concerning the administration of vocational schools, courses of study and instruction in vocational subjects, may be made in co-operation with or through the Bureau of Education.

The Commissioner of Education may make such recommendations to the board relative to the administration of this Act as he may from time to time deem advisable. It shall be the duty of the chairman of the board to carry out the rules, regulations, and decisions which the board may adopt. The Federal Board for Vocational Education shall have power to employ such assistants as may be necessary to carry out the provisions of this act.

SECTION 7. That there is hereby appropriated to the Federal Board for Vocational Education the sum of \$200,000 annually, to be available from and after the passage of this act, for the purpose of making or co-operating in making the studies, investigations, and reports provided for in section six of this act, and for the purpose of paying the salaries of the officers, the assistants, and such office and other expenses as the board may deem necessary to the execution and administration of this act.

Appropriation for use of Federal Board.

SECTION 8. That in order to secure the benefits of the appropriation for any purpose specified in this act, the State board shall prepare plans, showing the kinds of vocational education for which it is proposed that the appropriation shall be used; the kinds of schools and equipment; courses of study; methods of instruction; qualifications of teachers; and, in the case of agricultural subjects, the qualifications of supervisors or directors; plans for the training of teachers; and, in the case of agricultural subjects, plans for the supervision of agricultural education, as provided for in section ten. Such plans shall be submitted by the State board to the Federal Board for Vocational Education, and if the Federal Board finds the same to be in conformity with the provisions and purposes of this act, the same shall be approved. The State board shall make an annual report to the Federal Board for Vocational Education, on or before September first of each year, on the work done in the State and the receipts and expenditures of money under the provisions of this act.

State Boards to submit plans and methods of work.

SECTION 9. That the appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects and of teachers of trade, home economics, and industrial subjects shall be devoted exclusively to the payment of salaries of such teachers, supervisors, or directors having the minimum qualifications set up for the State by the State board, with the approval of the Federal Board for Vocational Education. The cost of instruction supplementary to the instruction in agricultural and in trade, home economics, and industrial subjects provided for in this act, necessary to build a well-rounded course of training, shall be borne by the State and local communities, and no part of the cost thereof shall be borne out of the appropriations

Proportion of salaries to be paid by state and local communities.



herein made. The moneys expended under the provisions of this act, in co-operation with the States, for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, shall be conditioned that for each dollar of Federal money expended for such salaries the State or local community, or both, shall expend an equal amount for such salaries; and that appropriations for the training of teachers of vocational subjects, as herein provided, shall be conditioned that such money be expended for maintenance of such training and that for each dollar of Federal money so expended for maintenance, the State or local community, or both, shall expend an equal amount for the maintenance of such training.

Appropriation  
for agri-  
cultural pur-  
poses, how  
expended.

SECTION 10. That any State may use the appropriation for agricultural purposes, or any part thereof allotted to it, under the provisions of this act, for the salaries of teachers, supervisors, or directors of agricultural subjects, either for the salaries of teachers of such subjects in schools or classes or for the salaries of supervisors or directors of such subjects under a plan of supervision for the State to be set up by the State board, with the approval of the Federal Board for Vocational Education. That in order to receive the benefits of such appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects the State board of any State shall provide in its plan for agricultural education that such education shall be that which is under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and be designed to meet the needs of persons over fourteen years of age who have entered upon or who are preparing to enter upon the work of the farm or of the farm home; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Board for Vocational Education, as the minimum requirement for such education in schools and classes in the State; that the amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal Board as the minimum for such schools or classes in the State; that such schools shall provide for directed or supervised practice in agriculture, either on a farm provided for by the school or other farm, for at least six months per year; that the teachers, supervisors, or directors of agricultural subjects shall have at least the minimum qualifications determined for the State by the State board, with the approval of the Federal Board for Vocational Education.

SECTION II. That in order to receive the benefits of the appropriation for the salaries of teachers of trade, home economics, and industrial subjects the State board of any State shall provide in its plan for trade, home economics, and industrial education that such education shall be given in schools or classes under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and shall be designed to meet the needs of persons over fourteen years of age who are preparing for a trade or industrial pursuit or who have entered upon the work of a trade or industrial pursuit; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Board for Vocational Education, as the minimum requirement in such State for education for any given trade or industrial pursuit; that the total amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal Board, as the minimum for such schools or classes in the State; that such schools or classes giving instruction to persons who have not entered upon employment shall require that at least half of the time of such instruction be given to practical work on a useful or productive basis, such instruction to extend over not less than nine months per year and not less than thirty hours per week; that at least one-third of the sum appropriated to any State for the salaries of teachers of trade, home economics, and industrial subjects shall, if expended, be applied to part-time schools or classes for workers over fourteen years of age who have entered upon employment, and such subjects in a part-time school or class may mean any subject given to enlarge the civic or vocational intelligence of such workers over fourteen and less than eighteen years of age; that such part-time schools or classes shall provide for not less than one hundred and forty-four hours of classroom instruction per year; that evening industrial schools shall fix the age of sixteen years as a minimum entrance requirement and shall confine instruction to that which is supplemental to the daily employment; that the teachers of any trade or industrial subject in any State shall have at least the minimum qualifications for teachers of such subject determined upon for such State by the State board, with the approval of the Federal Board for Vocational Education: *Provided*, That for cities and towns of less than twenty-five thousand population, according to the last preceding United States census, the State board, with the approval of the Federal Board for Vocational Education, may modify the conditions as to the length of course and hours of instruction per week for schools and classes giving instruction to those who have not entered upon employment, in order to meet the particular needs of such cities and towns.

Appropriations for salaries of teachers of trade, home economics and industrial subjects, how expended.

Appropriation for training of teachers, supervisors, or directors of agricultural subjects, how expended.

SECTION 12. That in order for any State to receive the benefits of the appropriation in this act for the training of teachers, supervisors, or directors of agricultural subjects, or of teachers of trade, industrial or home economics subjects, the State board of such State shall provide in its plan for such training that the same shall be carried out under the supervision of the State board; that such training shall be given in schools or classes under public supervision or control; that such training shall be given only to persons who have had adequate vocational experience or contact in the line of work for which they are preparing themselves as teachers, supervisors, or directors, or who are acquiring such experience or contact as a part of their training; and that the State board, with the approval of the Federal Board, shall establish minimum requirements for such experience or contact for teachers, supervisors, or directors of agricultural subjects and for teachers of trade, industrial, and home economics subjects; that not more than sixty per centum nor less than twenty per centum of the money appropriated under this act for the training of teachers of vocational subjects to any State for any year shall be expended for any one of the following purposes: For the preparation of teachers, supervisors, or directors of agricultural subjects, or the preparation of teachers of trade and industrial subjects, or the preparation of teachers of home economics subjects.

State treasurer to be designated custodian of federal appropriations.

SECTION 13. That in order to secure the benefits of the appropriations for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, or for the training of teachers as herein provided, any State shall, through the legislative authority thereof, appoint as custodian for said appropriations its State treasurer, who shall receive and provide for the proper custody and disbursements of all money paid to the State from said appropriations.

Federal board to certify amounts due each state.

SECTION 14. That the Federal Board for Vocational Education shall annually ascertain whether the several States are using, or are prepared to use, the money received by them in accordance with the provisions of this act. On or before the first day of January of each year the Federal Board for Vocational Education shall certify to the Secretary of the Treasury each State which has accepted the provisions of this act and complied therewith, certifying the amounts which each State is entitled to receive under the provisions of this act. Upon such certification the Secretary of the Treasury shall pay quarterly to the custodian for vocational education of each State the moneys to which it is entitled under the provisions of this act. The moneys so received by the custodian for vocational education for any State shall be paid out on the requisition of the State board as reimbursement for expenditures already incurred to such



schools as are approved by said State board and are entitled to receive such moneys under the provisions of this act.

SECTION 15. That whenever any portion of the fund annually allotted to any State has not been expended for the purpose provided for in this act, a sum equal to such portion shall be deducted by the Federal Board from the next succeeding annual allotment from such fund to such State.

Federal board to make deduction from succeeding allotment.

SECTION 16. That the Federal Board for Vocational Education may withhold the allotment of moneys to any State whenever it shall be determined that such moneys are not being expended for the purposes and under the conditions of this act.

Federal board may withhold allotment.

If any allotment is withheld from any State, the State board of such State may appeal to the Congress of the United States, and if the Congress shall not direct such sum to be paid, it shall be covered into the Treasury.

SECTION 17. That if any portion of the moneys received by the custodian for vocational education of any State under this act, for any given purpose named in this act, shall, by any action or contingency, be diminished or lost, it shall be replaced by such State, and until so replaced no subsequent appropriation, for such education shall be paid to such State. No portion of any moneys appropriated under this act for the benefit of the States shall be applied, directly or indirectly, to the purchase, erection, preservation, or repair of any building or buildings or equipment, or for the purchase or rental of lands, or for the support of any religious or privately owned or conducted school or college.

Appropriations not to be used for buildings or equipment.

SECTION 18. That the Federal Board for Vocational Education shall make an annual report to Congress, on or before December first, on the administration of this act, and shall include in such report the reports made by the State boards on the administration of this act by each State and the expenditure of the money allotted to each State.

Federal board to make annual report to include reports of state boards.

Approved, February 23, 1917.

#### SECTION 2.

[PUBLIC, No. 64, SIXTY-FIFTH CONGRESS.]

[H. R. 5949.]

AN ACT Making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses, and for other purposes.

Appropriations to Federal Board made available for other uses.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses, and for other purposes, namely:

## FEDERAL BOARD FOR VOCATIONAL EDUCATION

The appropriation provided by section seven of the act creating the Federal Board for Vocational Education, approved February twenty-third, nineteen hundred and seventeen, is also made available for printing and binding, law books, books of reference, and periodicals, and postage on foreign mail.

In any State the legislature of which met in nineteen hundred and seventeen and failed for any reason to accept the provisions of the vocational education act, as provided in section five of said act, if the governor of that State, so far as he is authorized to do so, shall accept the provisions of said act and designate or create a State board of not less than three members to act in co-operation with the Federal Board for Vocational Education and shall designate the State treasurer as custodian for all moneys allotted to that State under said act, the Federal Board shall, if such legislature took no adverse action on the acceptance of said act in nineteen hundred and seventeen, recognize such State board for the purposes of said act until the legislature of that State meets in regular session in due course and has been in session sixty days.

Approved, October 6, 1917.

## INDUSTRIAL REHABILITATION LAW

TRACY-COPPS

AN ACT To provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

Appropriation  
for training of  
persons dis-  
abled in in-  
dustry.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in order to provide for the promotion of vocational rehabilitation of persons disabled in industry or in any legitimate occupation and their return to civil employment there is hereby appropriated for the use of the States, subject to the provisions of this Act, for the purpose of co-operating with them in the maintenance of vocational rehabilitation of such disabled persons, and in returning vocationally rehabilitated persons to civil employment for the fiscal year ending June 30, 1921, the sum of \$750,000; for the fiscal year ending June 30, 1922, and thereafter for a period of two years, the sum of \$1,000,000 annually. Said sums shall be allotted to the States in the proportion which their population bears to the total population of the United States, not including Territories, outlying possessions, and the District of Columbia, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall not be less than a minimum of \$5,000 for any fiscal year. And there is hereby appropriated the following sums, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section, for the fiscal year ending

June 30, 1921, the sum of \$46,000; for the fiscal year ending June 30, 1922, and annually thereafter, the sum of \$34,000.

All moneys expended under the provisions of this Act from appropriations provided by section 1 shall be upon the condition (1) that for each dollar of Federal money expended there shall be expended in the State under the supervision and control of the State board at least an equal amount for the same purpose: *Provided*, That no portion of the appropriation made by this Act shall be used by any institution for handicapped persons except for the special training of such individuals entitled to the benefits of this Act as shall be determined by the Federal board; (2) that the State board shall annually submit to the Federal board for approval plans showing (a) the kinds of vocational rehabilitation and schemes of placement for which it is proposed the appropriation shall be used; (b) the plan of administration and supervision; (c) courses of study; (d) methods of instruction; (e) qualification of teachers, supervisors, directors, and other necessary administrative officers or employees; (f) plans for the training of teachers, supervisors, and directors; (3) that the State board shall make an annual report to the Federal board on or before September 1 of each year on the work done in the State and on the receipts and expenditures of money under the provisions of this Act; (4) that no portion of any moneys appropriated by this Act for the benefit of the States shall be applied, directly or indirectly, to the purchase, preservation, erection, or repair of any building or buildings or equipment, or for the purchase or rental of any lands; (5) that all courses for vocational rehabilitation given under the supervision and control of the State board and all courses for vocational rehabilitation maintained shall be available, under such rules and regulations as the Federal board shall prescribe, to any civil employe of the United States disabled while in the performance of his duty.

SECTION 2. That for the purpose of this Act the term "persons disabled" shall be construed to mean any person who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, is, or may be expected to be, totally or partially incapacitated for remunerative occupation; the term "rehabilitation" shall be construed to mean the rendering of a person disabled fit to engage in a remunerative occupation.

Definition of terms.

The state law accepting the provisions of the above act of congress will be found in Sections 367-8 to 367-12 of the General Code in chapter 2 of this volume.

SECTION 3. That in order to secure the benefits of the appropriations provided by section 1 any State shall, through the legislative authority thereof, (1) accept the provisions of this Act; (2) empower and direct the board designated or created as the State board for vocational education to co-operate in the administration of the provisions of the Vocational Education Act, approved February 23, 1917, to

Provision for acceptance and co-operation by states.



co-operate as herein provided with the Federal Board for Vocational Education in the administration of the provisions of this Act; (3) in those States where a State workmen's compensation board, or other State board, department, or agency exists, charged with the administration of the State workmen's compensation or liability laws, the legislature shall provide that a plan of co-operation be formulated between such State board, department, or agency, and the State board charged with the administration of this Act, such plan to be effective when approved by the governor of the State; (4) provide for the supervision and support of the courses of vocational rehabilitation to be provided by the State board in carrying out the provisions of this Act; (5) appoint as custodian for said appropriations its State treasurer, who shall receive and provide for the proper custody and disbursement of all money paid to the State from said appropriations. In any State the legislature of which does not meet in regular session between the date of the passage of this Act and December 31, 1920, if the governor of that State shall accept the provisions of this Act, such State shall be entitled to the benefits of this Act until the legislature of such State meets in due course and has been in session sixty days.

Federal Board  
to make rules  
and regula-  
tions for  
state co-opera-  
tion.

SECTION 4. That the Federal Board for Vocational Education shall have power to co-operate with State boards in carrying out the purposes and provisions of this Act, and is hereby authorized to make and establish such rules and regulations as may be necessary or appropriate to carry into effect the provisions of this act; to provide for the vocational rehabilitation of disabled persons and their return to civil employment and to co-operate, for the purpose of carrying out the provisions of this Act, with such public and private agencies as it may deem advisable. It shall be the duty of said board (1) to examine plans submitted by the State boards and approve the same if believed to be feasible and found to be in conformity with the provisions and purposes of this Act; (2) to ascertain annually whether the several States are using or are prepared to use the money received by them in accordance with the provisions of this Act; (3) to certify on or before the 1st day of January of each year to the Secretary of the Treasury each State which has accepted the provisions of this Act and complied therewith, together with the amount which each State is entitled to receive under the provisions of this Act; (4) to deduct from the next succeeding allotment to any State whenever any portion of the fund annually allotted has not been expended for the purpose provided for in this Act a sum equal to such unexpended portion; (5) to withhold the allotment of moneys to any State whenever it shall be determined that moneys allotted are not being expended for the purposes and conditions of this Act; (6) to require the replacement by withholding subsequent allotments of any portion of the moneys received by the custodian of any State under this Act that by any action or contingency is diminished

or lost: *Provided*, That if any allotment is withheld from any State, the State board of such State may appeal to the Congress of the United States, and if the Congress shall not, within one year from the time of said appeal, direct such sum to be paid, it shall be covered into the Treasury.

SECTION 5. That the Secretary of the Treasury, upon the certification of the Federal board as provided in this Act, shall pay quarterly to the custodian of each State appointed as herein provided the moneys to which it is entitled under the provisions of this Act. The money so received by the custodian for any State shall be paid out on the requisition of the State board as reimbursement for services already rendered or expenditures already incurred and approved by said State board. The Federal Board for Vocational Education shall make an annual report to the Congress on or before December 1 on the administration of this Act and shall include in such report the reports made by the State boards on the administration of this Act by each State and the expenditure of the money allotted to each State.

Payments  
made quar-  
terly to states,  
reports of  
state board.

SECTION 6. That there is hereby appropriated to the Federal Board for Vocational Education the sum of \$75,000 annually for a period of four years for the purpose of making studies, investigations and reports regarding the vocational rehabilitation of disabled persons and their placements in suitable or gainful occupations, and for the administrative expenses of said board incident to performing the duties imposed by this Act, including salaries of such assistants, experts, clerks, and other employees, in the District of Columbia or elsewhere as the board may deem necessary, actual traveling and other necessary expenses incurred by the members of the board and by its employees, under its orders, including attendance at meetings of educational associations and other organizations, rent and equipment of offices in the District of Columbia and elsewhere, purchase of books of reference, law books, and periodicals, stationery, typewriters and exchange thereof, miscellaneous supplies, postage on foreign mail, printing and binding to be done at the Government Printing Office, and all other necessary expenses.

Appropriations  
to Federal  
Board for  
investigation,  
etc.

A full report of all expenses under this section, including names of all employees and salaries paid them, traveling expenses and other expenses incurred by each and every employee and by members of the board, shall be submitted annually to Congress by the board.

No salaries shall be paid out of the funds provided in this section in excess of the following amounts: At the rate of \$5,000 per annum, to not more than one person; at the rate of \$4,000 per annum each, to not more than four persons; at the rate of \$3,500 per annum each, to not more than five persons; and no other employee shall receive compensation at a rate in excess of \$2,500 per annum: *Provided*, That no person receiving compensation at less than \$3,500

per annum shall receive in excess of the amount of compensation paid in the regular departments of the Government for like or similar services.

Federal Board  
may receive  
gifts and  
donations.

SECTION 7. That the Federal Board for Vocational Education is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally. All moneys received as gifts or donations shall be paid into the Treasury of the United States, and shall constitute a permanent fund, to be called the "Special fund for vocational rehabilitation of disabled persons," to be used under the direction of the said board to defray the expenses of providing and maintaining courses of vocational rehabilitation in special cases, including the payment of necessary expenses of persons undergoing training. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to Congress by said board: *Provided*, That no discrimination shall be made or permitted for or against any person or persons who are entitled to the benefits of this Act because of membership or nonmembership in any industrial, fraternal, or private organization of any kind under a penalty of \$200 for every violation thereof.

Approved, June 2, 1920.

Teaching of  
agriculture in  
public schools;  
supervision.

SECTION 776I-I. Agriculture shall hereafter be taught in all the common schools of all village and rural school districts of the state of Ohio, which are supported in whole or in part by the state, and may be taught in city school districts at the option of the board of education. Such agricultural instruction in each county district shall be under the general supervision of the county superintendent of schools.

HISTORY. — 102 v. 38, §1; 104 v. 168; 106 v. 111.

This section was omitted thru an oversight, the same section number having been given to a new section enacted at the 1921 session of the General Assembly and found on page 399.



# APPENDIX

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## LATE DECISIONS AND FORMS

(673)



## LATE DECISIONS AND OPINIONS AFFECTING SCHOOL LAWS

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### GRISWOLD ACT

The ordinances, resolutions, measures and proceedings mentioned in Section 23 of the Griswold Act (109 O. L., 336-348) refer to legislative acts, and the word "proceedings" has no reference to administrative acts necessary to be performed in executing the legislative will.

Where all legislation of a municipality necessary for street improvements has been fully completed before January 1, 1922, such legislation including authorization of bonds in anticipation of assessments upon abutting property to pay for such improvements, but such bonds are not actually sold and delivered until after January 1, 1922, the provisions of Section 6 of the Griswold Act, Section 2295-9, of the General Code, do not apply, and, where the legislation so provides, such bonds may be made to mature more than ten years after the date of execution and delivery. — *State ex rel. Johnson v. Chandler*, 105 O. S. — (Decided July 5, 1922.)

### GRISWOLD ACT

The fiscal officer of the subdivision in certifying the levy for the payment of final judgments provided for by Section 5649-1c G. C. should anticipate so far as possible the amount needed for the payment of future judgments as well as that needed for the immediate payment of judgments already rendered.

The second sentence of Section 2295-13 G. C. is inoperative; and the treasurer of the subdivision is not authorized to invest the proceeds of the judgment fund levy in securities. — *Op. Atty. Gen. No. 3286*, July 1, 1922.

### JOINT HIGH SCHOOL

Where a village school district and a rural school district unite to maintain a joint high school to be conducted by a committee in accordance with 7670 G. C. such union of districts is for high school purposes only and the superintendent or principal employed cannot be employed for supervision purposes other than the supervision of the joint high school so created. Where the provisions of Section 4740 G. C. (109 O. L., 243) cannot be harmonized with Section 7670 G. C., and the joint high school statutes, as amended in Senate Bill 100, 109 O. L., 373, the provisions of the joint high school statutes will govern.

When a 4740 district and a rural district unite under 7669 G. C. for joint high school purposes, such 4740 district loses its status as a 4740 district and the superintendent or principal employed in such joint high school would be employed in accordance with 7670 by the high school committee conducting such joint high school.

Where a rural district and an exempted village district unite under 7669 G. C. for high school purposes, the exempted village district is not required to have the sanction of the county superintendent of schools in the employment of the superintendent of the exempted village district. — *Op. Atty. Gen. No. 3287*, July 1, 1922.

### SUPERINTENDENT OF SCHOOLS

Under the provisions of Section 4526 G. C., setting forth the powers and duties of the board of tax commissioners in a city, the position of superintendent of city



schools is incompatible with the office of member of the board of tax commissioners (4523) in such city, and the two positions may not be held by one and the same person at the same time. — Op. Atty. Gen. No. 3291, July 3, 1922.

### ASSESSMENTS FOR TELEPHONE

A board of education may not pay mutual telephone company assessments. — Op. Atty. Gen. No. 3292, July 3, 1922.

### GRISWOLD ACT

As used in the Griswold Act, Section 2295-14 G. C., the phrase "bonds \* \* \* to be retired by means of a sinking fund" designates all bonds outstanding on the first day of January, 1922; and as used elsewhere in the same act, the term "serial bonds" refers only to bonds issued since that date for which the tax levying machinery of Section 5649-1b of the General Code, is provided.

Until all bonds outstanding on the first day of January, 1922, are retired, municipal, school district and county sinking fund trustees and commissions continue to exist and have full charge of the payment of all bonds issued by their respective subdivisions regardless of the date of issuance, with authority to manage and invest the funds raised by taxation for such purposes.

The treasurer of the subdivision does not succeed to any of the functions of the former sinking fund authorities of his subdivision either with respect to bonds issued prior to January 1, 1922, or with respect to bonds issued after that date until all bonds outstanding on the first day of January, 1922, have been retired and the "bond payment fund" provided for by Section 2295-14 G. C. does not come into existence as such until such bonds have been retired. Until such time it is the duty of bond issuing authorities such as the county commissioners, to continue to offer all bonds to the sinking fund authorities under statutes requiring such offer to be made. The treasurer of the subdivision is not authorized to purchase such bonds nor otherwise to control the proceeds of bond retirement levies until the sinking fund authorities go out of existence, at which time he will succeed to the functions, and the bond issuing authorities must thereafter offer the bonds issued by them to such treasurer. — Op. Atty. Gen. No. 3302, July 5, 1922.

### GRISWOLD ACT

Opinions Nos. 2923, 3031 and 3302 are modified in view of the decision of the Supreme Court in *State ex rel. Johnson vs. Chandler*, decided July 5, 1922.

The Griswold Act does not apply to bonds, the legislation or administrative action authorizing the issuance of which was complete and effective prior to January 1, 1922.

Bonds of the character above described are to be regarded as sinking fund bonds within the meaning of Section 20 of the Griswold Act, Section 2295-14 of the General Code, and other similar provisions of that act; so that so long as any such bonds which have been issued remain outstanding the local sinking fund authorities provided for by the law as it existed prior to the enactment of the Griswold Act, are to continue to exercise their respective functions, though such bonds were issued after January 1, 1922. — Op. Atty. Gen. No. 3371, July 21, 1922.

### SUSPENSION OF SCHOOLS

Where a school has been suspended under the provision of 7730 G. C., the board of education cannot move a school-house in which the suspended school was conducted until after a period of four years from the date of such suspension because of the rights of the petitioners, mentioned in 7730 G. C., the sole exception being where such building has been condemned for school use by proper state authorities. — Op. Atty. Gen. No. 3424, July 29, 1922.

## FORMS

## SUGGESTIVE FORMS FOR THE USE OF SCHOOL OFFICIALS

- Form No. 1. Certificate of fiscal officer.
- Form No. 2. Resolution to issue bonds under Sec. 5656, G. C.
- Form No. 3. Resolution to submit question of issuing bonds under Sec. 7625, G. C.
- Form No. 4. Resolution to issue bonds after vote of electors under Sec. 7625, G. C.
- Form No. 5. Resolution to issue bonds without vote of electors under Sec. 7629, G. C.
- Form No. 6. Resolution to issue emergency bonds under Sec. 7630-1, G. C.
- Form No. 7. Notice of bond sale.
- Form No. 8. School improvement bond issued under Sec. 7625 with coupon.
- Form No. 9. Debt extension bond issued under Sec. 5656 and 1465-58a, G. C. with coupon.
- Form No. 10. Call for bids and instructions to bidders.
- Form No. 11. Bidding form or proposal.
- Form No. 12. Proposal bond.
- Form No. 13. Contract.
- Form No. 14. Contractors bond.
- Form No. 15. Contract for transportation of pupils.
- Form No. 16. Bond for transportation of pupils.
- Form No. 17. Hypothecation of bonds by depositories under Sec. 7604, G. C.
- Form No. 18. Depository bond under Sec. 7604, G. C.
- Form No. 19. Resolution for increased tax levy under Sec. 7649-5.
- Form No. 20. Notice of election for additional tax levy under Sec. 5649-5a, G. C.
- Form No. 21. Resolution submitting exemption of interest and sinking fund levies under Sec. 5649-6a to 5649-6d, G. C.
- Form No. 22. Notice to county auditor of increased tax levy after election under Sec. 5649-4, G. C.
- Form No. 23. Petition for census.
- Form No. 24. Notice of special meetings.
- Form No. 25. Oath of school officers.
- Form No. 26. Bond of clerk of county board of examiners.
- Form No. 27. Clerk's bond.
- Form No. 28. Final receipt of clerk.
- Form No. 29. School board proceedings.
- Form No. 30. Petition to centralize schools.
- Form No. 31. Teacher's contract.

Form No. 1.

## FORM OF CERTIFICATES OF FISCAL OFFICER

(To PRECEDE ALL BOND RESOLUTIONS)

Sec. 2295-9 to 2295-10, G. C.

The undersigned, being the fiscal officer of.....School District, acting in compliance with the provisions of Sections 2295-7, 2295-9 and 2295-10 of the General Code of Ohio, do hereby estimate the life of the improvement proposed, viz., (*describe improvement*) to be.....years, and I hereby certify to the Board of Education of said school district that.....years is the maximum period of maturity for all of a series of bonds aggregating \$..... which the Board of Education at this time proposes to issue for the purpose of

....., said issue being for one of the purposes included in Class.....of Section 2295-9 G. C.

.....  
Clerk. Board of Education.

Dated this.....day of....., 19....

Form No. 2.

FORM OF RESOLUTION TO ISSUE BONDS TO EXTEND TIME OF  
PAYMENT OF INDEBTEDNESS CREATED BEFORE  
JANUARY 1, 1924

(Section 5656 G. C.)

*Be it resolved* by the Board of Education of the.....School District:

1. That certain indebtedness heretofore incurred by said district to-wit: that incurred in (here state the manner in which the indebtedness was incurred) to the amount of \$.....is hereby determined and declared to be an existing, valid and binding obligation of said school district.

2. That to provide means to extend the time of payment of said indebtedness which, from its limits of taxation, said school district is unable to pay at maturity, it is necessary to issue and there shall be issued bonds of said school district to the amount of \$.....

3. Said bonds shall be numbered consecutively from (1) to..... (.), inclusive. Bonds Nos. one (1) to..... (.), inclusive, shall be in the denomination of..... dollars (\$.....) and bond No..... (.) shall be in the denomination of..... dollars (\$.....). Said bonds shall be dated....., 19.., and shall bear interest at the rate of.....per cent (..%) per annum, payable semi-annually on the first days of.....and .....of each year, commencing....., 19.., as evidenced by attached coupons. They shall fall due in their numerical order one each year commencing ..... 19.. Both principal and interest shall be payable when due at the office of the Treasurer of this School District, provided, however, that if said bonds are purchased by the Industrial Commission of Ohio, both principal and interest shall be payable at the office of the Treasurer of State of Ohio and all of said bonds shall be embodied in one bond, payable in installments evidenced by combined interest and principal coupons drawn in accordance with Section 1465-58a of the General Code. Both bonds and interest coupons shall be made payable to bearer and bonds shall be signed by the President and Clerk of the Board. The interest coupons shall be signed by the Clerk or he may have his facsimile signature printed or lithographed thereon. Should said bonds be purchased by the Industrial Commission of Ohio, the combined interest and principal coupons shall also be signed by the President and Clerk.

4. That an annual tax sufficient to pay the interest and principal of said bonds as the same fall due and sufficient to create a sinking fund to insure the payment of said bonds and interest at maturity shall be and the same is hereby levied upon all the taxable property of the School District during each year until said bonds and interest have been fully paid. Said tax shall be annually levied, certified, extended and collected in the same manner and at the same time and by the same officers as other taxes of the School District.

5. *Be it Further Resolved*, That said bonds be first offered to the Board of Commissioners of the Sinking Fund of said School District and in the event all or any part thereof are not purchased by said Board then said bonds or the remainder



thereof shall be offered to the Industrial Commission of Ohio, and if said bonds or any part thereof are not purchased by said Industrial Commission the same shall be by the Clerk advertised and sold according to law.

6. The funds derived from the sale of said bonds shall be used for the purpose of refunding said indebtedness and for no other purpose.

Form No. 3.

### \*FORM OF RESOLUTION

TO SUBMIT QUESTION OF ISSUING BONDS

(Sec. 7625 G. C.)

*Be it Resolved* and hereby determined by the Board of Education of.....  
.....School District:

SECTION 1. That for the proper accommodation of the schools of said District, it is necessary.....(here state one or more of the purposes named in Sec. 7625 G. C.).

SECTION 2. That the funds at the disposal of the Board of Education or that can be raised under the provisions of Sections 7629 and 7630 G. C. are not sufficient to accomplish such purposes; that an estimate of the probable amount of money required for such purposes herewith made by the Board is \$....., and that a bond issue is necessary to secure said amount of money.

*Be it Further Resolved*, That the question of issuing bonds of this District in said amount of \$.....be submitted to the electors of the District at the regular election (or at a special election) to be held on the ....., 19...

*Be it Further Resolved*, That the ballots to be used at such election shall contain substantially the following language:

"Shall bonds of the.....School District be issued  
in the amount of \$.....to (here state purpose).

For the issue of bonds.....

Against the issue of bonds.....

*Be it Further Resolved*, That the Clerk is hereby directed to certify a copy of this resolution to the Deputy State Supervisors and Inspectors of Elections, ..... County, Ohio, and cause notice of such election to be given as required by law.

### NOTICE OF ELECTION

Notice is hereby given by the Board of Education of the.....  
School District, ..... County, Ohio, that at the general (or special)  
election in said District on the.....day of....., 19., between the  
hours of 5:30 A. M. and 5:30 P. M., Central Standard Time, there will be sub-  
mitted to the electors of said District, the question of issuing bonds in the  
amount of \$....., for the purpose of.....

By order of the Board of Education of.....School District.

Dated....., 19...

.....  
Clerk, Board of Education.

\*In order to meet requirements of absent voters' law above notice should be published or posted more than 40 days before election.

Form No. 4.

## FORM OF RESOLUTION TO ISSUE BONDS

PURSUANT TO VOTE OF ELECTORS  
(Section 7625-7628 G. C.)

WHEREAS, On the.....day of....., 19.., pursuant to a resolution of this Board of Education adopted on the.....day of....., 19.., and pursuant to a proper notice of election published (*or* posted), according to law, there was submitted to the qualified electors of.....District of .....County, Ohio, at the regular election (*or* special election called for that purpose), held on said date the question of issuing bonds of said School District in the amount of..... (\$.....) dollars, for the purpose of .....

WHEREAS, A majority of the electors voting on said question at said election voted in favor of the issuance of said bonds, and

WHEREAS, On the.....day or ....., 19.., being the second Monday following said election, the returns thereof were canvassed by this Board as required by law, and it was found and determined that the majority of the electors at said election voted in favor of the issuance of said bonds and the result thereof was entered upon the records of the Board, and

WHEREAS, This Board does now estimate that the probable cost of .....will be....., (\$.....) dollars and that in order to secure the funds therefor it will be necessary to issue bonds of said school district in said amount under authority of said vote.

Therefore, *Be it Resolved by the Board of Education of..... School District*, That there shall be at this time issued under authority of said vote of the electors of this District and under authority of this resolution, bonds of the amount of..... (\$.....) dollars to secure funds to ..... Said bonds shall be numbered consecutively from one (1) to..... (.), inclusive. Bonds Nos. one (1) to..... (.), inclusive, shall be in the denomination of..... (\$.....) dollars and bonds No. .... shall be in the denomination of ..... (\$.....) dollars. Said bonds shall be dated....., 19.., and shall bear interest at the rate of.....per cent (.% ) per annum, payable semi-annually on the first days of.....and.....of each year, commencing....., 19.., as evidenced by attached coupons. They shall fall due in their numerical order one each year commencing....., 19... Both principal and interest shall be payable when due at the office of the Treasurer of this School District, provided, however, that if said bonds are purchased by the Industrial Commission of Ohio, both principal and interest shall be payable at the office of the Treasurer of State of Ohio and all of said bonds shall be embodied in one bond, payable in installments evidenced by combined interest and principal coupons drawn in accordance with Section 1465-58a of the General Code. Both bonds and interest coupons shall be made payable to bearer and bonds shall be signed by the President and Clerk of the Board. The interest coupons shall be signed by the Clerk or he may have his facsimile signature printed or lithographed thereon. Should said Bonds be purchased by the Industrial Commission of Ohio, the combined interest and principal coupons shall also be signed by the President and Clerk.

That an annual tax sufficient to pay the interest and principal of said bonds as the same fall due and sufficient to create a sinking fund to insure the payment of said bonds and interest at maturity shall be and the same is hereby levied upon all the taxable property of the School District during each year until said bonds and interest have been fully paid. Said tax shall be annually levied, certified, ex-

tended and collected in the same manner and at the same time and by the same officers as other taxes of the School District.

*Be it Further Resolved*, That said bonds be first offered to the Board of Commissioners of the Sinking Fund of said School District and in the event all or any part thereof are not purchased by said Board then said bonds or the remainder thereof shall be offered to the Industrial Commission of Ohio, and if said bonds or any part thereof are not purchased by said Industrial Commission the same shall be by the Clerk advertised and sold according to law. The funds derived from the sale of said bonds shall be used for the purpose of..... and for no other purpose.

Form No. 5.

### FORM OF RESOLUTION TO ISSUE BONDS

TO OBTAIN OR IMPROVE SCHOOL PROPERTY

Without Vote of Electors

(Section 7629-7630 G. C.)

*Be it Resolved* by the Board of Education of.....School District in regular session and two-thirds of all members concurring, that for the purpose of (here state the particular purpose), it is necessary to issue and there shall be issued under authority of Sections 7629-7630, G. C., bonds to the amount of \$..... Said bonds shall be numbered consecutively and from one to ....., inclusive.

(The balance of the resolution may be the same as in Form of Resolution under Sec. 7625-7628.)

Form No. 6.

### FORM OF RESOLUTION TO ISSUE BONDS

(EMERGENCY BONDS UNDER SECTION 7630-1, G. C.)

WHEREAS, (here recite one or more of the emergencies mentioned in Sec. 7630-1).

Now, THEREFORE, *Be it Resolved and Determined* by the Board of Education of the.....School District that for the proper accommodation of the schools of the district it is necessary to erect a school house for the..... school pupils, that the probable cost of said building herewith estimated at \$....., or to repair or improve the existing school building or buildings to meet the requirements of the order of the Industrial Commission; that the funds of the disposal of the board of education, or that can be raised under the provisions of section 7629 and section 7630, G. C., are not sufficient to meet the cost of erecting said building and that a bond issue therefor is necessary and that it is not practicable to secure funds by the issuance of bonds under the provisions of sections 7625, 7626, 7627, 7628, 7629 and 7630 of the General Code by reason of the limits of taxation applicable to such district and that it is expedient and necessary to issue said bonds under authority of the provisions of section 7630-1 as amended in 109 O. L., p. 343.

*Be it Therefore Further Resolved*, That there shall be under authority of said section 7630-1, G. C., as amended, bonds to the amount of \$..... to secure funds to construct a modern, fire-proof.....school building. Said bonds shall be numbered consecutively from.....to.....inclusive. Bonds numbers.....to.....inclusive shall be in the denomination of \$.....



each and bonds numbers.....to.....inclusive shall be in the denomination of \$.....each. Said bonds shall be dated....., 19.., and shall bear interest at the rate of.....per cent per annum, payable semi-annually on the first days of.....and.....of each year, commencing....., 19.., as evidenced by attached coupons. They shall fall due in their numerical order, one bond each year, commencing....., 19.. Both principal and interest shall be payable when due at the office of the treasurer of the school district; provided, however, that if said bonds are purchased by the Industrial Commission of Ohio, both principal and interest shall be payable at the office of the treasurer of state at Columbus, Ohio, and all of said bonds shall be embodied in one bond payable in installments evidenced by combined interest and principal coupons drawn in accordance with section 1465-48a of the General Code of Ohio. Both bonds and interest shall be made payable to bearer and said bonds shall be signed by the president and clerk of the board. The interest coupons shall be signed by the clerk or he may have his facsimile signature printed or lithographed thereon, except that should said bonds be purchased by the Industrial Commission of Ohio the combined interest and principal coupons shall also be signed by the president and clerk.

That an annual tax sufficient to pay the interest and principal of said bonds as the same fall due and sufficient to create a sinking fund to insure the payment of said bonds and interest at maturity shall be and the same is hereby levied upon all of the taxable property of the school district during each year until said bonds and interest have been fully paid. Said tax shall be annually levied, certified, extended and collected in the same manner and at the same time and by the same officers as other taxes of the school district.

Said bonds shall be first offered to the board of commissioners of the sinking fund of the school district and in the event all or any part thereof are not purchased by said board then said bonds, or the remainder thereof, shall be offered to the Industrial Commission of Ohio, and if said bonds or any part thereof are not purchased by the said Industrial Commission of Ohio, the same shall be by the Clerk advertised and sold according to law.

The funds derived from the sale of said bonds shall be used for the erection of a.....school building and for no other purpose.

Form No. 7.

## NOTICE OF BOND SALE

### ISSUE OF EMERGENCY BONDS

..... SCHOOL DISTRICT

Proposals will be received at the office of....., clerk of Board of Education of.....School District,.....County, Ohio (post-office address, ..... Ohio), until one o'clock P. M. on the.....day of....., for the purchase of serial bonds of said.....School District in the sum of \$....., dated ..... The maximum maturity of such bonds being.....years.....months. Said bonds are numbered from one to ....., both inclusive, and are each for the sum of \$....., and payable as follows:

Bonds Nos. 1, 2, 3 and 4, .....; bonds Nos. 5, 6, 7 and 8, .....; bonds Nos. 9, 10, 11 and 12, .....; bonds Nos. 13, 14, 15 and 16, .....; bonds Nos. 17, 18, 19 and 20, .....; bonds Nos. 21, 22, 23 and 24, .....; bonds Nos. 25, 26, 27 and 28, .....

Said bonds shall bear interest at the rate of .....% per annum, payable semi-annually. No interest shall be due on said bonds until ..... Said bonds are issued under authority of Section 7630-1, General Code of Ohio, and the other sections of the General Code therein incorporated by reference, and in accordance with a resolution passed by the Board of Education of said ....., School District, on the.....day of..... Said bonds will be sold to the highest bidder for not less than par and accrued interest, but the board reserves the right to reject any and all bids. All bids must be sealed and state the number of bonds bid for, the gross amount of premium and accrued interest to date of delivery. All bids must be accompanied by a certified check in not less than.....of the amount bid upon, upon some solvent bank, payable to the order of the Board of Education of said.....School District, on condition that if the bid is accepted, that the bidder will pay for such bonds bid for, said check to be taken by said board if said bid is accepted as a guarantee of the bidder complying with the terms of said sale; otherwise the check to be returned to bidder.

By order of the Board of Education of ..... School District,  
..... County, Ohio.

....., *Clerk.*

Form No. 8.

UNITED STATES OF AMERICA

STATE OF OHIO

COUNTY OF .....

..... SCHOOL DISTRICT

SCHOOL IMPROVEMENT

BOND

Know All Men by These Presents: That the.....School District,  
..... County, Ohio, acknowledges itself indebted to and for value received hereby promises to pay to bearer, the sum of

..... DOLLARS

on the ..... day of ....., with interest thereon at the rate of ..... per centum (....) per annum, payable semi-annually on the ..... day of ..... and ..... of each year; both principal and interest of this bond are payable in lawful money of the United States of America at the.....Banking Company, ....., Ohio, upon presentation and surrender of this bond and the interest coupons hereto attached as they severally become due.

This bond is one of a series of ..... (....) bonds of like date and effect except as to maturity, dated ....., 19...., numbered consecutively from one to ....., both inclusive, all of said bonds being in the denomination of ..... dollars (\$.....) each, aggregating in amount ..... dollars (\$.....), issued for the purpose of providing funds for purchasing site and for the construction of a school building in said ..... School District, authorized by a majority of the electors of said School District voting on the proposition to issue said bonds, and in favor thereof, at an election regularly and legally held in said School District on the ..... day of ....., 19...., and under and by the authority of the General

Laws of the State of Ohio and particularly Section 7625 et seq. of the General Code, and in pursuance and by virtue of a Resolution duly and legally adopted by the Board of Education of said ..... School District on the ..... day of....., 19....

It Is Hereby Certified, Recited and Declared, that all acts, conditions and things necessary to be done precedent to and in the issuance of this bond in order to make the same a legal, valid and binding obligation of said School District, have been done, happened and performed in regular and due form, as required by law; that the faith, credit and revenues of said School District, together with all the taxable property therein situate, are hereby irrevocably pledged for the prompt payment of the principal and interest hereof at maturity; that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing these bonds; and that due provision has been made for the levy and collection of direct annual taxes sufficient to pay the interest on this bond as it becomes due and to provide a sinking fund for its final redemption at maturity.

IN WITNESS WHEREOF, the ..... School District, ..... County, Ohio, has caused this bond to be signed by the President and Clerk of its Board of Education, and the interest coupons attached to bear the fac-simile engraved signature of said Clerk, as of the ..... day of ..... , 19....

Board of Education, ..... School District,  
..... County, Ohio.

[SEAL] .....  
..... President.  
..... Clerk.

Coupon No. .... \$.....  
On ....., 19...., the ..... School District, ..... County, Ohio, promises to pay to bearer, at the ..... Banking Company, ....., Ohio, ..... Dollars and Fifty Cents, being interest then due on its School Improvement Bond, dated ....., 19....  
No.

..... Clerk.

UNITED STATES OF AMERICA

No..... STATE OF OHIO \$.....  
COUNTY OF .....

INDEBTEDNESS EXTENSION  
BOND

Know All Men by These Presents: That the.....School .....County, Ohio, acknowledges itself indebted to and for value received hereby promises to pay to bearer the sum of ..... DOLLARS in..... (.....) installments of payments of..... Dollars (\$.....) each, one of said.....installments shall fall due on the.....day of.....of each year from....., 19....



to....., 19...., both inclusive, together with interest at the rate of .....per centum (....%) per annum, computed upon unpaid principal and payable semi-annually on the.....day of.....and.....of each year, commencing....., 19...., and continuing until the entire principal and interest thereon have been paid. Said principal, installments and all interest are payable in lawful money of the United States of America at the office of the Treasurer of the State of Ohio, in the City of Columbus, Ohio, upon presentation and surrender of the several interest and combined interest and principal installment coupons hereto attached as they respectively mature, except that the last numbered coupon shall be payable when due only upon surrender thereof and of this bond.

This bond, drawn in compliance with the requirements of a Resolution of Purchase adopted by the Industrial Commission under authority of Section 1465-58a of the General Code of Ohio, includes all the bonds of a series of bonds dated ....., 19...., numbered from.....to....., both inclusive, all of said bonds being in the denomination of \$..... each, aggregating in amount \$..... (being the principal amount hereof), and is issued for the purpose of providing funds with which to pay certain existing, valid and binding obligations of said.....School District, ..... County, Ohio, which indebtedness, from its limits of taxation, said School District is unable to pay at maturity; said bond is issued under and by the authority of the General Laws of the State of Ohio, particularly Section 5656 of the General Code, and pursuant to a Resolution duly and legally adopted by the Board of Education of said.....School District, ..... County, Ohio, on the .....day of....., 19...., as amended....., 19....

It Is Hereby Certified, Recited and Declared, that all acts, conditions and things necessary to be done precedent to and in the issuance of this bond in order to make the same a legal, valid and binding obligation of said School District, have been done, happened and performed in regular and due form as required by law; that the faith, credit and revenue of said School District, together with all the taxable property therein situate, are hereby irrevocably pledged for the prompt payment of the principal and interest hereof at maturity; that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing this bond; and that due provision has been made for the levy and collection of direct annual taxes sufficient to pay the interest hereon as it becomes due and to create a sinking fund sufficient to provide for the payment of the principal installments hereof at maturity.

IN WITNESS WHEREOF, The.....School District, ..... County, Ohio, has caused the signatures of the President and Clerk of its Board of Education to be subscribed by said officers to this bond and to the interest and to the combined interest and principal installment coupons hereto attached as of the.....day of....., 19....

BOARD OF EDUCATION

..... SCHOOL DISTRICT,  
..... COUNTY, OHIO.

[SEAL]

.....  
President.

.....  
Clerk.

Bal. Unpaid Principal

Coupon No..... \$.....  
 \$.....Principal  
 \$.....Interest  
 On ....., 19...,  
 The ..... School District, ..... County,  
 Ohio, promises to pay to bearer, at the office of the Treasurer,  
 of the State of Ohio, Columbus, Ohio, the sum of  
 ..... Dollars,  
 .....Dollars being the installment of the principal and  
 .....Dollars being the interest then due on its In-  
 debtedness Extension Bond, dated June 5, 1922.  
 Bond No. 1.  
 .....  
*President Board of Education.* *Clerk Board of Education.*

Form No 10.

CALL FOR BIDS AND INSTRUCTIONS TO BIDDERS

(Sec. 7623, 2362 and 2363 General Code.)

Sealed proposals will be received by the Board of Education of the.....  
 .....School District of.....Ohio, at the office of  
 the clerk, ....., in ....., Ohio, until  
 12 o'clock noon, city time, ....., 19..., and opened by the clerk of  
 said board at its first public meeting thereafter, for all labor and material necessary  
 for the .....  
 .....in said, according to plans and specifications  
 dated....., 19..., prepared by....., architect for  
 said board.

Plans and specifications for this work are on file at the office of the clerk of  
 the board above mentioned, and at the office of the architect, .....  
 Copies of said plans and specifications may be obtained from the architect upon  
 the deposit of \$....., which deposit will be refunded upon their return in  
 good order prior to....., 19....

Separate proposals will be received on the work as a whole, upon the general  
 contract exclusive of mechanical equipment, upon the following items of me-  
 chanical equipment, upon the following items of mechanical equipment: (1) .....  
 ....., (2) ....., (3) .....  
 (4) ....., or on any combination of items.

All proposals shall be made in conformity with the General Code of Ohio  
 on blank forms furnished by the clerk or architect and shall be enclosed in a  
 sealed envelope and addressed to the Board of Education of the.....  
 School District, and endorsed "Proposals for General Contract (or other specific  
 item) for the.....  
 .....," on the outside of the envelope.

Each bid shall be accompanied by a bond with surety or sureties satisfactory  
 to the board of education, which surety or sureties shall be either persons resident  
 of.....County, Ohio, or a resident or nonresident surety company  
 authorized to do business in Ohio, or by cash or certified check on a solvent bank  
 of the city (or county) of....., Ohio. The amount of said bond,  
 cash or certified check shall be equal to at least .....% of the total amount

The Board of Education reserves the right to reject any and all bids.  
By order of the Board of Education.

*President.*

BIDDING FORM

To the Board of Education,  
..... School District,  
....., Ohio:

Having carefully examined the call for bids and the instructions to bidders, the specifications and drawings, ..... to ....., inclusive, dated ....., 19..., for (title of improvement as given in specifications) School Building located in ....., ....., Ohio, as well as the premises and all the conditions affecting the work, the undersigned hereby proposes to furnish all material and labor required by them and in strict accordance therewith as indicated under the headings noted below:

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....
Unit price per cu. yd. for added or deducted excavation:		
	Dollars.....	Cents \$.....

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....



Unit price per lb. for reinforcing steel in place:

.....Dollars.....Cents \$.....

Unit price per sq. ft. for wood forms, erected and wrecked:

.....Dollars.....Cents \$.....

Unit price per cu. yd. for added or deducted concrete:

.....Dollars.....Cents \$.....

#### IV. STRUCTURAL STEEL AND MISCELLANEOUS IRON WORK:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### V. STRUCTURAL SLATE:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### VI. ROOFING AND SHEET METAL WORK:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### VII. BRICK MASONRY:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### VIII. STONE MASONRY:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### IX. PAINTING AND GLAZING:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### X. LATHING AND PLASTERING:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### XI. CARPENTER WORK AND HARDWARE:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### General Contract:

Total for Items I to XI inclusive: \_\_\_\_\_:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

#### MECHANICAL EQUIPMENT

#### XII. ELECTRIC WORK, WIRING AND BELLS:

Labor .....Dollars.....Cents \$.....

Material .....Dollars.....Cents \$.....

Total .....Dollars.....Cents \$.....

XIII. PLUMBING, GAS PIPING, SEWERS AND DRAINS:

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....

XIV. HEATING AND VENTILATING:

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....

XV. AUTOMATIC TEMPERATURE REGULATION:

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....

COMBINATION BIDS

NOTE: Combination bids will only be considered if separate bids are submitted on each of the items of the combination. The amount of the combination bid need not be equal the sum of the separate bids:

Total for Items \_\_\_\_\_ and \_\_\_\_\_:

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....

Total for Items \_\_\_\_\_ and \_\_\_\_\_:

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....

Total for Items I to XV inclusive \_\_\_\_\_:

Labor .....	Dollars.....	Cents \$.....
Material .....	Dollars.....	Cents \$.....
Total .....	Dollars.....	Cents \$.....

If Item XV is bid in combination with any other item or items the bidder shall name here the kind of temperature regulation he is bidding upon.....

ALTERNATES

1. For substitution of.....for.....as described in art. .... of the specifications.

Add—Labor \$\_\_\_\_\_.

Material \$\_\_\_\_\_.

Total \$\_\_\_\_\_.

Deduct—Labor \$\_\_\_\_\_.

Material \$\_\_\_\_\_.

Total \$\_\_\_\_\_.

If the foregoing proposal shall be accepted by the Board of Education of the.....School District of.....County, Ohio, and the undersigned shall fail to execute a satisfactory contract as stated in the advertisement hereto attached, then the Board of Education may, at its option, determine that the undersigned has abandoned the contract, and thereupon this proposal shall be null and void, and the certified check or bond accompanying this proposal, or the amount of said certified check, shall be forfeited to, and become the prop-

erty of the Board of Education; otherwise the bond or certified check, accompanying this proposal, or the amount of said check, shall be returned to the undersigned.

Attached hereto is a bond or certified check on.....  
.....Bank of....., Ohio, for the sum of.....  
Dollars (\$.....), according to the terms of the advertisement.

The full name and residence of all persons and parties interested in the foregoing bid as principals are as follows:

Name.	Address.
.....	.....
.....	.....
.....	.....
.....	.....
Signature of bidder.....	.....
Business address of bidder.....	.....
Dated at.....the.....day of.....	.....

The bidder is required to state in detail below what work of a character similar to that included in the proposed contract he has done and to give references and such other information as will enable the Board of Education to judge of his responsibility, experience, skill, and business and financial standing.

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

Form No. 12.

PROPOSAL BOND

(Not to be filled out if certified check is submitted.)

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned.....  
.....as principals, and  
.....as sureties,  
are held and firmly bound unto the Board of Education of.....  
.....School District, of.....County, Ohio, in the penal sum  
of.....Dollars (\$.....),  
for the payment of which, well and truly to be made, we hereby jointly bind our-  
selves, our heirs, executors, administrators, successors and assigns.

Signed this.....day of ....., 192.....

The condition of this obligation is such that if the foregoing proposal is accepted and the contract awarded to the above named bidder.....  
....., and the said bidder shall, within ten (10) days  
after the award of said work, enter into contract in writing, with surety or  
sureties, to be approved by the Board of Education, for the faithful performance  
of said contract, this obligation shall be void, otherwise the same shall be in full  
force and virtue in law.

.....  
.....  
.....  
.....



Form No. 13.

CONTRACT

For the.....

This agreement made this.....day of.....by and between the Board of Education of the.....School District .....Ohio, party of the first part and.....hereinafter designated as the Contractor, party.....of the second part:

Witnesseth, That the parties to these presents each in consideration of the undertakings, promises and agreements on the part of the other herein contained, have undertaken, promised and agreed and do hereby undertake, promise and agree, the party of the first part for itself, its successors and assigns, and the part.....of the second part for.....and.....heirs, executors and administrators or successors, as follows:

That the part.....of the second part in consideration of the sums of money hereinafter mentioned to be paid by said party of the first part to said part.....of the second part shall and will at.....own cost and expense furnish all the materials, tools and labor for, and build the.....County, Ohio, in accordance with the specifications and general provisions hereto attached and the drawings therein mentioned, which specifications, general provisions and drawings together with the advertisement, information for bidders and proposal hereto attached, are hereby made a part of this agreement.

GENERAL PROVISIONS

.....

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, and have executed this agreement the day and year first above written.

BOARD OF EDUCATION OF ..... SCHOOL DISTRICT,

By .....  
*President.*  
.....  
*Clerk.*  
.....  
*Contractor.*

Form No. 14.

BOND

(The sufficiency of a personal bond must be certified to by County Auditor.)

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned.....as principal, and .....as sureties, are hereby held and firmly bound unto the Board of Education of the .....School District, ....., Ohio, in the penal sum of.....Dollars (\$.....)

for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this.....day of....., 192....

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the.....day of....., 192...., enter into a contract with the Board of Education of the..... School District, ....., Ohio, which said contract is made a part of this bond and the same is set forth herein.

Now, if the said..... shall well and faithfully do and perform the things agreed by..... to be done and performed according to the terms of said contract; and shall pay all lawful claims of sub-contractors, material men and laborers, for labor performed and materials furnished in the carrying forward, performing or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any material man or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond.

The foregoing bond is hereby approved.

....., 192....

.....  
President.

.....  
Clerk.

.....  
Contractor.

.....  
Surety.

.....  
Surety.

Form No. 15.

# CONTRACT FOR TRANSPORTATION OF PUPILS—BOND ATTACHED

This Contract, made and entered into this.....day of....., 192...., by and between the Board of Education of..... School District, ..... County, State of Ohio, party of the first part, and ..... of the County of....., State of Ohio, party of the second part, Witnesseth:

That the said party of the first part, the Board of Education of the..... School District, County and State aforesaid, agrees and binds itself to furnish..... to the said..... party of the second part, for the purpose of conveying children in the said school district to and from the said..... school for the period of..... months, twenty days to the month, beginning on....., 192...., and continuing for the specified time.

The said..... agrees to furnish..... necessary to convey the children to and from school and to..... himself or to have....., a person acceptable to the party of the first

part, with a certificate as required by law. It is also agreed the.....  
will start from.....and shall follow.....

roads to the school building, and shall convey all pupils of legal school age on said routes, or within lawful distance of same (Sec. 7731) to said school building, who shall be in attendance at said school or who shall desire to enter said school, stopping at such places as may be designated by the party of the first part for receiving and unloading pupils.

It is also agreed that no children living within.....of said school shall be permitted to ride in said.....without consent of Board of Education.

The Board of Education of the.....School District agrees to pay said.....the sum of..... (\$.....) per month for his services as stated above, said sum to be payable at the end of each month, and said.....is at all times subject to the direction of the Principal of said school, and said Board of Education reserves the right to discontinue said service and.....at any time, should the service prove unsatisfactory, or whenever the schools may be closed because of an epidemic of disease.

Each party to this contract agrees to the specifications hereinafter given as follows:

#### SPECIFICATIONS

First—The driver must start from the further terminal of his route at such time as will enable him to reach the schoolhouse not later than.....A. M., provided, however, that no pupil be loaded before.....A. M.

Second—The driver shall make a full stop at each railroad crossing and make sure that no trains are approaching from either direction. (Sec. 7731-2 G. C.).

Third—The driver must be at the schoolhouse at.....P. M. to receive his load, or at such other times as the Board of Education or Principal may direct.

Fourth—The driver is required to keep his.....under shelter when not in use, and exercise care in preserving it.

Fifth—The driver shall keep the.....in a sanitary condition and well ventilated at all times.

Sixth—The driver shall seat the pupils in the....., subject to the approval of the Principal, and see to it that proper conduct is maintained on the.....

Seventh—Should any pupil persist in bad conduct on the....., it shall be the duty of the driver to disqualify the pupil from riding, and the pupil so disqualified shall not be permitted to ride again until permission is given by the Board of Education.

Eighth—The driver shall furnish bond for the faithful performance of the stipulations of this contract that pertain to his duties in a sum to be fixed by the Board of Education, with sureties acceptable to them.

In witness whereof we have hereunto set our hands on the day and date above mentioned.

..... Board of Education.  
By ..... President.  
..... Clerk.  
..... Contractor..

The above form of contract may be used where the vehicle is furnished by the Board of Education. It can be changed readily, to conform to local conditions.



Form No. 16.

BOND

KNOW ALL MEN BY THESE PRESENTS, that we.....as principal and.....and.....as sureties, are held and firmly bound unto the Board of Education of the.....School District, ..... County, State of Ohio, in the sum of.....Dollars (\$.....) for the payment of which we jointly and severally bind ourselves.

The condition of the above obligation is this: That the said contractor has this day entered into the above contract to transport pupils as indicated in said contract. Now, if the said contractor shall well and truly perform the condition of said contract, on his part to be performed, then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

Bond approved this, the.....day of....., 192.....  
....., *President.*  
....., *Clerk.*  
....., *Contractor.*  
....., *Surety.*  
....., *Surety.*

Form No. 17.

HYPOTHECATION OF BONDS BY DEPOSITORIES

Sec. 7604 to 7609 G. C.

WHEREAS, the Board of Education of.....School District, .....County, Ohio, did on the.....day of....., 19...., designate the.....Bank of....., Ohio, as depository for the money of said.....School District in any sum not exceeding.....Dollars, in and by virtue of the provisions of Sections 7604 to 7609, both inclusive, of the General Code of Ohio, and

WHEREAS, at a legal meeting of the board of directors of said bank, held on the.....day of....., 19...., a resolution was duly adopted authorizing....., as president, and....., as cashier of said bank, to enter into a good and sufficient undertaking payable to the board of education of said.....School District, or to hypothecate securities, owned by said bank, hereinafter described, as collateral security, or both, in such sum not less than the maximum amount above mentioned, as such board of education may direct, conditioned for the receipt, safe-keeping and payment over of all of the money of said school district, deposited with said bank with the interest thereon at the rate specified in the proposal, and for the faithful performance of all duties imposed by law upon depositories of money of said school district, a certified copy of which resolution is hereto attached and made a part hereof, and

WHEREAS, at a legal meeting of said board of education of said.....School District a resolution was duly adopted authorizing....., the president, and....., the clerk of said board to accept said securities, owned by said bank and hereinafter described, as collateral security for a sum not to exceed.....Dollars, to be deposited with said bank according to the terms of the aforesaid proposal and designation, now, therefore,

WITNESSETH: That the undersigned as said officers of said bank hereby transfer and have this day duly pledged and delivered to the Board of Education

of said.....School District, as collateral security as aforesaid for the faithful performance of said contract so awarded and the faithful performance of the duties imposed by law upon depositories of school funds, the following described securities:

(Here describe the bonds under the following heads: Number, Bonds issued by, Serial Numbers, Date of Issue, Date due, Rate of Interest, Face Value, Estimated market value.)

All of the above described securities shall be the property of the Board of Education of said.....School District, in case of any default upon the part of said bank in its capacity as depository. The above described securities may be negotiated or released only by a resolution of the Board of Education of said.....School District, authorizing such negotiation or release, passed by a majority vote of the full membership thereof, at a regular meeting or at a special meeting called for that purpose.

IN WITNESS WHEREOF, the said.....Bank has hereunto subscribed its name and affixed its corporate seal, by and through its president and cashier, being thereunto duly authorized, this.....day of....., A. D. 19....

[SEAL] ..... Bank.  
By....., President.  
Attest: ..... Cashier.

The above bonds as hereby accepted as collateral security for the deposit in any sum not to exceed \$.....

THE BOARD OF EDUCATION OF  
..... SCHOOL DISTRICT,  
By....., President.  
Attest: ..... Clerk.

(In case the cashier of the depository bank is designated by some other title, such title should be substituted for the word "cashier" wherever the same appears in the above prescribed form.)

Form No. 18.

# BOND OF DEPOSITORY FOR SCHOOL FUNDS

Sections 7604 to 7609 G. C. provides bond to be given in January of even numbered years unless securities hypothecated.

KNOW ALL MEN BY THESE PRESENTS:

That the.....  
(name of bank)

as principal, and.....  
(names of sureties)

as sureties, are jointly and severally bound unto the Board of Education of the ..... School District, ..... County, Ohio, in the sum of.....Dollars, (\$.....), for the payment of which the said, The .....  
(name of bank)

and .....  
(names of sureties)

above named, do bind themselves, their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas, the said The .....has been duly designated and  
(name of bank)

approved as a depository for the purpose of receiving on deposit funds of the

Board of Education of the said School District, pursuant to the provisions of Sections 7604 to 7609 inclusive of the General Code,

AND WHEREAS, the Board of Education of the.....School District has duly selected and designated The.....

(name of bank)

as a depository, and has agreed to deposit with the said The....

.....from time to time, the public moneys of the  
(name of bank)

school district, and in accordance with the law has required of the said The  
.....a bond to executed and deposited

(name of bank)

with it, with surety thereon, and conditioned as required by said board.

NOW THEREFORE, if the said The.....

(name of bank)

shall pay over to the said Board of Education for the use of said school district, upon demand made therefor, or upon the written order of said board, any and all moneys which, now are in the custody of said bank belonging to the said school district, or which from time to time hereafter, may come into the custody of such The.....

(name of bank)

of law, free from any discount or deduction of any kind therefrom, and shall further pay to the said Board of Education for the use of the school district, interest upon the daily balances on such deposit or deposits, at the rate of..... per centum per annum, payable at the time specified by said board without demand therefor, and shall do each and every act as required of such depository by the provisions of law or the resolution of such board, and shall save the Board of Education from any loss whatsoever upon such deposit or deposits made with the said.....

(name of bank)

said.....shall pay to and settle with the

(name of bank)

Board of Education the amount due in full (including interest to the Board of Education from said The.....whenever

(name of bank)

such.....has failed, refused or neglected

(name of bank)

to pay over to the Board of Education any and all moneys which may be in the custody of said.....belonging to the

(name of bank)

school district and covered by this bond; then this obligation shall be void, otherwise it shall be and remain in full force and effect.

IN WITNESS WHEREOF, The .....

(name of bank)

as principal, and.....as sureties, have

(name of sureties)

caused this bond to be signed by the proper officers of such bank, and such sureties, this.....day of .....

The .....

(Correct legal title of bank)

(AFFIX

(SEAL OF BANK)

By....., *Its President*, and  
....., *Its Secretary, Cashier*.  
....., *Surety*.  
....., *Surety*.  
....., *Surety*.



Section 2726 G. C. provides short form of bond for deposit of county funds which probably could be utilized for deposit of school funds. Above suggested form was adopted from that used for deposit of state funds.

Form No. 19.

FORM OF RESOLUTION UNDER SECTION 5649-5 OF THE  
GENERAL CODE

*Be it Resolved by the Board of Education of the.....  
School District:*

It is hereby declared by the Board of Education of the.....  
School District that the amount of taxes that may be raised in the said school district by the levy of taxes for school purposes at the maximum rate authorized by sections 5649-2 and 5649-3 of the General Code will be insufficient, and it is therefore

*Resolved*, That it is expedient to levy taxes at a rate in excess of such rate, to-wit, at the rate of.....mills (here insert the number of mills desired to be levied) for and during.....(not exceeding five) years, on the general property duplicate of said school district, for any and all purposes for which taxes may be lawfully levied therein for school purposes.

*Be it further Resolved*, That a copy of this resolution shall be certified by the clerk of the board of education to the deputy state supervisors (and inspectors) of..... (here insert the county or counties in which any part of the district is located) count....

Form No. 20.

NOTICE OF ELECTION UNDER SECTION 5649-5a OF THE  
GENERAL CODE

Notice is hereby given that a proposition to levy additional taxes for school purposes for and during the period of.....years, at a rate not exceeding .....mills in addition to the maximum rate authorized by law, will be submitted to the electors of the.....school district at an election to be held on....., the.....day of....., 19...., at the usual polling places in said district, between the hours of 5:30 o'clock forenoon and 5:30 o'clock afternoon.

*Clerk of the Board of Education of the.....School District.  
Board of Deputy State Supervisors (and Inspectors) of.....County.*

By.....  
Chairman.

.....  
Clerk.

(This notice must be inserted in one or more newspapers printed in the taxing district once a week for four consecutive weeks. If no newspaper is printed in the district, the notice must be posted in a conspicuous place in the district and published once a week for four consecutive weeks in a newspaper of general circulation in the district. The section (5649-5a) is ambiguous, in that it requires twenty days' notice and permits the election to be held twenty days after the adoption of the resolution. The only safe course is to adopt the resolution in time so that the four weeks publication can be made.

The section is also ambiguous with respect to who shall give the notice of election. The above form complies with all the laws which could possibly apply by having the notice signed by the clerk of the board of education and the deputy state supervisors of elections.)

Form No. 21.

FORM OF RESOLUTION UNDER SEC. 5649-6a TO 5649-6d

WHEREAS, the.....(county, ..... township, municipal corporation or school district) of....., Ohio, on January 20, 1920, had a bonded indebtedness in the amount of \$....., \$..... of which was then outstanding, \$.....of which had been authorized by a vote of the electors at elections held prior to said date, and \$..... of which was provided for by ordinance (or resolution) adopted on or before said date. Therefore,

*BE it Resolved* by the.....(commissioners, trustees, board of education, etc.) of the.....of....., Ohio, that there shall be submitted to the electors of the said.....at the (regular or primary) election held on....., the.....day of....., 19...., the proposition of exempting from the limitations of section 5649-2, 5649-3a and 5649-5b of the General Code all subsequent levies for interest and sinking fund purposes on account of said bonds outstanding on January 20, 1920, or authorized prior to or otherwise provided for by resolution (or ordinance) adopted on or before said date. The rate of taxes that would be required for such purposes in the year.....on the basis of the estimated duplicate for such year is .....mills. The number of years during which the exemption from such limitations would apply is.....

*Be it further Resolved*, that a copy of this resolution shall be certified to the deputy state supervisor (or deputy state supervisors and inspectors) of.....count.....

Form No. 22.

NOTICE TO COUNTY AUDITOR OF INCREASED TAX LEVY  
AFTER ELECTION

WHEREAS, At an election held on the.....day of....., 19...., there was submitted to the electors of.....School District, under authority of section 5649-4 G. C., the question of levying a tax outside of the limitations of law, at a rate of.....mills\* on each dollar of taxable property of said district, or in the sum of \$....., as provided by law; and the board of education, after having canvassed the returns of said election, finds that.....votes were cast in favor of making such levy and .....votes against said levy, and that said question carried; and

WHEREAS, The tax budget for said district for the ensuing year has been prepared and is now in the hands of the county auditor; now, therefore,

*Be it Resolved* by the Board of Education of.....School District: That there is hereby levied on the taxable property of said school district a tax of three (3) mills on each dollar valuation thereof by said board of education; that a copy of this resolution be put into the hands of said auditor forthwith by the clerk of the board of education for his information and action;\*\*

\*The budget commission is without authority to disturb the levy so long as it is not more than 3 mills beyond the exterior limitations of the Smith Law.

\*\*Remaining part of the form need be used only when more than 3 mills are levied beyond exterior limitations of the Smith Law.

that the county auditor be requested to correct the school tax budget, as required herein, to include said levy, or a sum amounting to \$....., to be thus distributed thus: For contingent fund \$....., for tuition fund \$....., for building fund \$....., for other funds \$.....

.....  
*President.*  
 .....  
*Clerk.*

Form No. 23.

### FORM FOR PETITION TO HAVE CENSUS TAKEN

To the Board of Education of ..... School District,  
 ..... County, Ohio.

The undersigned, constituting at least one hundred of the qualified electors of the.....school district of.....County, Ohio, respectfully petition your honorable body to order a census to be taken of said school district as provided in section 4688-1 of the General Code of Ohio.

*Signatures.*

.....  
 .....  
 .....  
 .....

I hereby certify that this list of petitioners contains the names of one hundred legally qualified electors in.....school district,  
 .....County, Ohio.

The board of Education upon its own motion may order a census of the school district to be taken.

Form No. 24.

### NOTICE OF SPECIAL MEETINGS

Notice is hereby given that there will a meeting of the board of education of ..... school district, ..... County, Ohio, on the ..... day of ..... at ..... o'clock .... M., to consider any business which may be considered necessary.

.....  
*President.*  
 .....  
*Clerk.*

....., 19....

NOTE:—A special meeting may be called by the president, clerk or two members of the board. This form may be adapted to the use of county boards of education.

Form No. 25.

### OATH OF SCHOOL OFFICERS

This form of oath may be used for school board members and officers and may be administered by the clerk or any board member, or any person authorized to administer oaths:

I, ....., do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Ohio; and that I will faithfully and impartially discharge my duties as ..... in and for the ..... school district, ..... County, Ohio, to the best of my ability,



and in accordance with the laws now in effect and hereafter to be enacted, during my continuance in said office and until my successor is chosen and qualified.

Sworn to and subscribed before me, this ..... day  
of ....., A. D. 19....

Form No. 26.

### BOND OF CLERK OF COUNTY BOARD OF EXAMINERS

*Know All Men by These Presents:* That we.....  
.....are held and firmly bound unto the  
State of Ohio, in the sum of.....Dollars, for the  
payment whereof we jointly and severally bind ourselves.

Whereas, the said.....has been duly  
elected and qualified as county superintendent of schools of.....  
.....County, and state of Ohio, for the term of  
.....years from the ..... day of  
....., A. D., 19...., and until his successor  
is chosen and qualified, and is therefore clerk of the county board of school ex-  
aminers of the said county.

Now, if the said ..... will  
pay into the county treasury monthly the examination fees received by the board,  
make the statistical returns required by law and otherwise perform faithfully all  
duties required of him as clerk of said board, then this obligation shall be void;  
otherwise it shall remain in full force.

Signed and sealed by us this ..... day of .....  
....., A. D., nineteen hundred and.....

The sureties on the above bond, and its amount, approved by.....  
County Auditor of ..... County this .....  
day of ....., A. D. 19....

*Auditor.*

Form No. 27.

### CLERK'S BOND

*Know All Men by These Presents,* That we.....  
are held and firmly bound unto the state of Ohio, in the sum of.....  
dollars, for the payment whereof we jointly and severally bind ourselves.

Whereas, the said.....has been duly chosen and qualified  
as clerk of the board of education of.....district  
in.....township.....county, and state of Ohio, for  
the term of two years from the.....day of January, A. D. 19...., and  
until his successor is chosen and qualified.

Now, the condition of the above obligation is such, that if the said.....  
.....shall faithfully perform all the official duties required of him  
as clerk of said board, then this obligation will be void; otherwise it shall be  
and remain in full force.

Signed and sealed by us this.....day of....., A. D. nineteen hundred and .....

The sureties on the above bond, and its amount, approved by said board this ..... day of ....., A. D. 19....

.....  
*President of said Board.*

Form No. 28.

### FINAL RECEIPT OF CLERK

\$....., Ohio, ..... 19....

Received of ....., retiring clerk of ..... school district, the sum of ..... dollars, the record book, account book, school laws, teachers' certificates and reports, and the other official books and papers in his hands.

....., *Clerk.*

Form No. 29.

### SCHOOL BOARD PROCEEDINGS

(For minutes of board)

..... County, Ohio, .....19....

Upon call of the chairman, the.....  
 Board of Education met in the.....at  
 .....o'clock, .....M., on the.....day of.....  
 19...., with the following members present:

.....  
 .....  
 .....

.....  
*Clerk.*

After reading and approval of the minutes of the preceding meeting the following business was transacted:

(Here make complete record of all business of the board. All motions should be recorded whether carried or lost.

The above is a correct record of the proceedings of the board of education on....., 19....

.....  
*President.*

.....  
*Clerk.*

Form No. 30.

### FORM FOR PETITION TO CENTRALIZE SCHOOLS

To the Board of Education of.....School District,  
 ..... County, Ohio.

The undersigned, constituting at least one-fourth of the qualified electors in ..... school district, respectfully petition your honorable body that the question of centralization of the schools of the ..... school district be submitted to a vote of the qualified electors of said school

district, and that your body proceed therefore as provided in section 4726, General Code of Ohio.

*Signatures.*

.....  
 .....  
 .....  
 .....

I hereby certify that the above named electors of .....  
 school district ..... county, Ohio, are legally qualified electors  
 and constitute one-fourth of the electors of such school district.

.....  
 The Board of Education is also required upon order of the County Board  
 of Education to submit this question to the voters.

If this question is lost at the election thus ordered it may not be submitted  
 again for a period of two years unless a petition is made by at least forty per cent  
 of the electors of the district.

Form No. 31.

### TEACHER'S CONTRACT

An agreement entered into between.....of.....  
 .....county, Ohio, and the Board of Education of.....  
 .....school district in.....county, Ohio; the  
 said.....hereby agrees to teach in the public schools of said  
 district for a term of.....months, and also agrees to abide by  
 the rules and regulations of the schools of said district. And in consideration of  
 such services, the said board of education agrees to pay said.....the  
 sum of.....dollars, payable monthly at the office of the  
 treasurer of the board of education.

It is further agreed that the provisions of Section 7700 of the General Code  
 are a part of this contract.

Entered into this.....day of....., 19.....

.....,  
*Teacher.*  
 .....  
*President.*  
 .....  
*Clerk.*

Any provisions may be easily inserted.



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